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Eleventh Edition.

BY

T. O. HASTINGS LEES, Esq., M.A.,

BARRISTER-AT-LAW;

Late Chief Constable of the Isle of Wight and of Northamptonshire; D. I. of Royal Irish Constabulary;

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PREFACE.

IN editing this Edition of "SNOWDEN" a "new departure" has been attempted, viz., the inclusion of half-a-dozen special Chapters relating to the powers and duties of justices. These Chapters, which form Part I. of Book, have been prepared by my friend, Mr. J. RIDLEY SHIELD, Clerk to the Justices in the Alresford and Petersfield Divisions of Hampshire. Parts II. and III. of the Work ("Constables" and "General Subjects") remain unaltered, save for increase in bulk consequent on the number and nature of Acts recently added to the Statute Book.

An alteration has been made in the title of the Work, the words "Magistrates' Assistant" being added. I understand from the Publishers that, until the last two or three editions, these words formed part of the title; it is hoped that in its present form the book may be increasingly useful to both the Justice and the Constable.

I have to acknowledge my indebtedness for perusal of proofs and help in compiling to several legal friends, and to Officers of both County and Borough Police Forces, especially to Mr. HENRY L. CANCELLOR, of the Western Circuit, and Mr. F. E. LEMON, of the South-Eastern Circuit, to Mr. HOEL HACON, of the Devon Constabulary, and to the Chief Officers of the Liverpool Police.

T. O. H. L.

2, GARDEN COURT,
TEMPLE, E.C.

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THE

POLICE OFFICERS' GUIDE.

PART I.

JUSTICES.

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SECTION I.

JUSTICES—ANTIQUITY OF OFFICE.

"THE whole Christian world hath not the like office as justice of the peace if duly executed"; so said Lord COKE long since, and the same may be said to-day. The truth is, our justices perform, without any reward other than appertains to the consequence they acquire from their office, a large amount of work indispensable to the administration of the law, and it cannot be disputed that for the most part they discharge what are often very difficult duties with becoming good sense and impartiality.

The office of justice as existing in former days may be classified under three heads:

(1) Justices appointed by Act of Parliament—certain bishops—great officers of State, etc.

(2) Justices by charter—Mayors and Borough officers.
(3) Justices appointed by commission.

AS TO JUSTICES BY COMMISSION.

This "commission" was issued about the year 1327, the earliest statute on the subject being 1 Edw. 3, s. 2, c. 16, from which Act dates that final alteration in our constitution whereby the election of conservators of the peace was taken from the people and translated to the assignment of the sovereign. As to manner of issuing the commission see 27 Hen. 8, c. 24, s. 2.

By 13 Rich. 2, st. 1, c. 7, and 2 Hen. 5, st. 2, c. 1, justices for counties shall be made of the most sufficient knights, esquires, and gentlemen of the law. By statute 1 M. sess. 2, c. 8, s. 2, no sheriff shall exercise the office of a justice of the peace during the term that he acts as sheriff (Burn's "Justice of the Peace," pub. 1845).

Justices (*a*) as they now exist are practically judges of record appointed by the king to be justices within certain limits for the conservation of peace and for the execution of divers things comprehended within their commission and within divers statutes committed to their charge.

County justices are appointed by the Crown, usually on the recommendation of the Lord Lieutenant to the Lord Chancellor. The estate qualification (£100 per annum for freehold, or the reversion to lands of clear yearly value of £300) is fixed by 18 Geo. 2, c. 20, s. 1. See also s. 13. The occupation qualification (occupying for two years preceding appointment a dwelling-house assessed to inhabited house duty at £100) is fixed by 38 & 39 Vict. c. 54 (*b*).

(*a*) The appellation of "justice" is usually applied to persons in commission of the peace for counties, etc. "Magistrate" to persons exercising similar authority under charter, as in cities and boroughs.

(*b*) Such justices are not to act twelve months after they have ceased to have such qualification.

Justice ex-officio.—The chairman of an urban or rural district council, unless a woman or personally disqualified, shall be by virtue of office, and during his continuance of office, a justice for county in which the district is situated (Local Government Act, 1888, s. 2; and Local Government Act, 1894, s. 22).

Justices for boroughs are appointed by the Crown. The Lord Chancellor sometimes adopts recommendations of town council, and at other times acts quite independently. A justice for a borough need not be a burgess nor have an estate qualification, as required by a justice for a county, but he must reside or have property which he occupies in or within seven miles of the borough (45 & 46 Vict. c. 50), s. 157. The mayor has precedence over other borough magistrates, but not over county justices at petty sessions (48 J. P. 20).

As to "Summary Jurisdiction of Justices," see Section V., *post*, p. 30. As to "Procedure," see Section III., p. 11. As to "Jurisdiction," see Section II., p. 5.

Such an office as that of justice of the peace should not be undertaken lightly. It confers upon the person appointed extensive powers which may affect the liberty of the subject, and which should only be exercised with caution and after grave consideration. Where discretion is given to justices by statute they may refuse to act if actuated by no improper motive; if to act is imperative, then they must do the required act: put in another form, when they have power by statute to do a ministerial act, they cannot decline their jurisdiction.

Owing to the fact of justices of the peace deriving their qualification from the division in which they have the right to act, they are often face to face with questions in which they may be interested or partially interested, and they are in consequence sometimes exposed to the suspicion of the general public, especially when they have to administer laws which are considered to confer special privileges on their own class.

Yet, although their decisions are for these reasons often the subject of adverse criticism, we find the justices as a rule discharge the various and onerous duties connected with their office with credit to themselves and benefit to the community whom they

serve, doing a large amount of work indispensable to the administration of the law without any reward other than that conferred upon them by the dignity of their office. It should also be borne in mind that county justices have frequent opportunities of contributing to the proper administration of justice by their wide local knowledge, a knowledge which can only be acquired by residence in their division, and thereby having varying interests in the locality and people.

Actions against justices.—In any action against a justice for any act done in the execution of his duty, malice must be alleged. In all cases where justices refuse to do any act relating to the duties of their office, application may be made to the Court of Queen's Bench, calling on them to show cause why such act should not be done (11 & 12 Vict. c. 44).

SECTION II.

JURISDICTION OF JUSTICES.

WITHIN the county for which he is appointed any justice on the commission of a county may exercise in all places, and for all purposes, the powers conferred upon him by his office (*a*).

As a matter of fact, however, every county is split-up into divisions, and the magisterial work of the county is, as a rule, carried out by the justices resident within the division or adjacent thereto. Magistrates living on the borders of a county are sometimes appointed for the county in which they reside and the adjoining one—

(a) Each bench has sole charge of judicial business, or matters of offence or complaint, within that part of a county comprised in its division.

(b) It may be said in general terms that all civil matters affecting a locality and referred by statute to the cognizance or conduct of justices can only be dealt with by justices of the division within which such matters arise, or to which they relate.

(c) By direct enactment in some cases, and as a matter of convenience and courtesy in others, the justices of one division will not concern themselves with affairs of this description which have arisen in or can be properly dealt with in another. This, however, does not prevent a magistrate committing an offender for trial, though the offence was not committed in his division (52 J. P. 120).

(d) In licensing matters each division constitutes a separate and independent licensing district within the provisions of the Intoxicating Liquor Acts.

(e) In cases of riot or other civil commotion a magistrate may be required to act in any part of a county.

(*a*) A justice cannot act judicially out of his own county or borough. As to actions against justices, see p. 4.

A *bonâ fide* claim of right or title to real property raised by the defence ousts the jurisdiction of justices to hear and determine in a summary manner, and though the facts are such as they could deal with, they must decline to interfere. There is one exception to this, and that is, when a landlord applies for a warrant of ejectment, and the tenant refuses to give up possession. The justices may receive evidence of title, and a claim of right by the tenant will not oust the jurisdiction of the justices.

JURISDICTION OF JUSTICES IN DISPUTES.

A dispute under the Employers and Workmen Act, 1875, between an employer and workman (arising out of or incidental to their relation as such, s. 3) may be heard and determined by a court of summary jurisdiction, which shall for this purpose be deemed a court of civil jurisdiction. The court may order payment of any sum which it may find to be due as wages or damages, and may exercise all or any of the powers conferred on a county court (38 & 39 Vict. c. 90, s. 4). Disputes between masters and apprentices arising out of or incidental to their relations as such may be heard and determined by a court of summary jurisdiction, and in such disputes the court is to have the same power as if the dispute were between an employer and workman, and certain additional powers laid down under s. 6 of the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90).

JUSTICES EQUALLY DIVIDED IN OPINION.

In such a case justices may adopt one of three courses :

1. They may adjourn the hearing and have the case reheard before a bench consisting of the same justices with others in addition, or before an entirely new set of justices (*Bagg* v. *Colquhoun*, [1904] 1 K. B. 554; 68 J. P. 159).
2. They may dismiss the summons (*Kinnis* v. *Graves* (1898), 67 L. J. Q. B. 583).
3. One of the justices may retire or withdraw his opinion, and then the case can be decided according to the opinion of the majority (*Ex parte Evans* (1894), 58 J. P. 260).

It is perfectly clear that justices have a discretion as to which course they will adopt, but it must be borne in mind it is a

discretion which amounts to a judicial act, and must be exercised judicially. The prevailing opinion is largely in favour of an adjournment and a rehearing in all cases where such a course may lead to a final determination of the case.

AUTREFOIS ACQUIT.

This plea is not always easy of application ; the justices, when in doubt, generally allow the plea to prevail and discharge the accused.

The plea *autrefois acquit* or *autrefois convict* may be described as follows :

A person who has once been lawfully acquitted or convicted of an offence cannot be retried for the same offence. Estoppel has practically the same effect in the civil or quasi-civil matters before justices.

The test whether the plea is available in any particular case is whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first.

As to "Acquittal," "Attempted Crime," "Burden of Proof," "Coercion," etc., see under CONSTABLES, Chapter III., *post.*

COURTS.

By 42 & 43 Vict. c. 49, s. 20, every case must be heard, tried, and dealt with in open court. Prior to this Act a magistrate could deal with any case at his own home or elsewhere.

Open court is of two kinds :

1. The petty sessional court where the magistrates usually meet for holding sessions. See p. 9, *post.*
2. Occasional court : a place appointed after due notice by the magistrate for occasional purposes, such as a police station, or their clerk's office, or other convenient place. See Summary Jurisdiction Act, 1879, s. 20, p. 40, *post.*

At an occasional court the limit of imprisonment is fourteen days, and the heaviest fine is twenty shillings.

Special sessions.—There are some businesses, such as licensing justices, poor rate appeals, etc., which have to be carried out at special sessions, and of such special sessions every magistrate in the district must have proper notice.

County and borough petty sessional courts are usually held weekly or fortnightly, and in the various divisions courts of session quarterly.

COURT OF ASSIZES.

Courts of oyer and terminer (to hear and determine) and general gaol delivery are periodically held in every county in the kingdom. Assizes were formerly held twice in each year. An Act passed in 1876 gave power to unite counties for the purposes of winter assizes. These provisions have been since extended. For assize purposes England is divided into eight circuits. Civil actions are also heard at assizes before the court sitting at Nisi Prius (*a*).

In the metropolitan and city police districts the sessions of the Central Criminal Court (held at the Old Bailey) correspond with the county assizes. 19 & 20 Vict. c. 16, permits the trial at the Central Criminal Court of offences committed out of its jurisdiction.

The Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), provides that crimes which are triable either at assizes or quarter sessions *shall be sent to assizes.* Section 1 provides that crimes triable at sessions *are to be tried at sessions* and not sent to the next assizes, unless the High Court so orders (s. 4) (*b*).

(*a*) 14 Edw. 3, c. 16, authorises a trial before the judge of assize in lieu of the superior court, and gives it the name of a trial at Nisi Prius. The phrase Nisi Prius (signifying "except first") arises thus: Prior to Magna Charta certain civil actions were tried only at Westminster. On judges of assize being appointed to visit counties, it was enacted (13 Edw. 1) that the trial was to be had at Westminster unless the Justices of Assize came first into that county.

(*b*) In a Home Office circular (December, 1896) attention was drawn to the number of cases, triable at sessions, which were sent for trial at assizes. It was inferred by the judges of the Supreme Court that justices did not

COURT OF QUARTER SESSIONS.

General quarter sessions of the peace are held in every county before two or more justices of the peace, one of whom must be of the quorum, once in every quarter of a year, which, by 11 Geo. 4 & 1 Will. 4, c. 70, s. 85, is *the first whole week* after October 11th, December 28th, March 31st, and June 24th. The Quarter Sessions Act, 1894 (57 & 58 Vict. c. 6), gives power to justices to vary these dates fourteen days before or after, so as not to clash with assizes. When holden otherwise than quarterly, they are called the general sessions of the peace. By 3 Edw. 3, they had jurisdiction to try all felonies and misdemeanors within their counties, but subsequent statutes confined them to the trial of smaller felonies and misdemeanors. They also hear appeals from the decisions of justices at petty sessions.

Borough sessions were established in boroughs under the Municipal Corporations Act. They are held by the recorders of the respective boroughs once a quarter or oftener, if they think fit, and at times to be fixed by them. Their jurisdiction is over such offences as are cognisable by the county sessions.

Persons charged with any offence which upon a first conviction may be punished by penal servitude for life, as well as those arraigned for the following offences, *cannot be tried at quarter sessions*, but must be committed to the assizes: Treason, blasphemy, administering, etc., unlawful oaths, perjury, forgery, burglary (*c*), arson, bigamy, abduction, concealment of birth, fraudulent bankruptcy, sedition and libel, conspiracies to commit such offences, stealing or injuring judicial records, wills, or titles.

PETTY SESSIONS.

Petty sessions are sittings of one or more justices of the peace, who are empowered by statute to try in a summary way and without a jury certain minor offences.

sufficiently avail themselves of the Assizes Relief Act, but treated the fact of assizes preceding quarter sessions as a "special reason" for commitment to assizes.

(*c*) But see now the Burglary Act, 1896, which allows offences to be tried at sessions if the case be not a grave or difficult one.

The powers of justices in petty sessions are defined in the Summary Jurisdiction Acts of 1848 (Jervis's Act) and 1879. See Section V., p. 30, *post*.

The Summary Jurisdiction Act of 1879 considerably extends the power of magistrates, enabling them to deal summarily with indictable offences. Two justices sitting in petty sessions or one stipendiary magistrate constitute "a court of summary jurisdiction" under the Act.

CONTEMPT OF COURT.

Contempt of court is a disobedience to or disregard of the rules, orders, process, or dignity of a court which has power to punish for such offence by attachment. Every judge of a court of record has power immediately to commit for a contempt committed in his presence. A justice cannot commit for contempt of court: he can only order the expulsion of the offender. But if a witness refuses to be examined on oath, or to take such oath or affirmation, or to answer questions put to him, he may be committed to prison for seven days.

SERVICES OF POLICE AT COURTS.

The police attend all criminal courts; they are also bound to assist sheriff's officers when called upon, and county court bailiffs providing they are acting under proper writ or authority.

Under 28 Vict. c. 36, revising barristers are entitled to the services of the police at their courts, as are also the Commissioners of Fisheries when holding a court under the Salmon Fisheries Act, 1865.

SECTION III.

PROCEEDINGS AND HEARING.—DEFINITIONS, Etc.

The procedure of justices in cases of summary jurisdiction is regulated by the Summary Jurisdiction Acts. See Section V., *post*.

Generally offences are brought before a court of summary jurisdiction by (a) complaint, (b) information :

(a) asks for an order to recover payment of money, or for the defendant to do or not to do a particular thing, and is a civil remedy and need not be in writing ;

(b) asks for a conviction, and is a remedy for crime, and also need not be in writing, but it must be laid within six calendar months from the time the grievance arose, unless a particular time is fixed by statute.

The magistrate or magistrates hearing a charge on complaint or information need not be the same as those before whom it was laid, and, further, a commitment or warrant of distress may be refused by a justice not present at the hearing.

When required by Act of Parliament, or whenever a warrant for the apprehension of a defendant is to be issued, it must be on the oath of the informant or some witness on his behalf.

After the complaint or information has been laid a summons is issued, and this is addressed to the person charged, and orders him to appear at a certain time and place to answer the charge. The summons must be signed and sealed by the magistrate issuing it, and must be served by a constable or other peace officer on the defendant, either personally or by leaving it with some one for him at his last or most usual place of abode. Unless fixed by statute a reasonable time must be allowed between the service and the hearing.

Service of process of an English court of summary jurisdiction in Scotland is provided for (except for civil debts) by the Summary Jurisdiction Process Act, 1881.

Proof of service of summons may be by declaration.

No information, complaint or summons can be objected to for an alleged defect therein in substance or form, or for any variance between such information, complaint, or summons, and the evidence on the part of the informant, unless, in the opinion of the justices, the variance is such that the party summoned has been deceived or misled.

If a person served with a summons does not appear thereto, then, after due proof of the service thereof, the justice or justices before whom he should have appeared may proceed to hear and determine the case in his absence, or, upon the information or complaint being duly substantiated, issue a warrant to apprehend the party.

If the complainant or informant do not appear the justice or justices shall dismiss the complaint or information, unless, for reasons sufficient to themselves, they think it well to adjourn the hearing to some future day.

When both parties appear, then the justice or justices shall proceed to hear and determine the complaint or information.

In summary cases either party may appear by his counsel or solicitor.

WARRANT IN FIRST INSTANCE.

This may be issued for any offence punishable on conviction by a justice upon oath or affirmation substantiating satisfactorily the matter of the information. The proper mode is, however, to issue a summons first, except in cases of a very serious character.

There are three kinds of warrants :

1. For apprehension of offenders.
2. Search warrant, when there is evidence that a person has stolen goods in his possession.
3. Distress warrant.

There is no avoidance of a warrant by the death or cesser of office of the justice who issued it.

Every complaint and information must be heard by one, two, or more justices as directed by statute, and the place in which such

complaint and information shall be heard shall be an open and public court.

Proceedings may be continued notwithstanding the death of the informer before the hearing.

When all parties are present the defendant is charged by the clerk of the court, and he is asked if he admits the charge, or is guilty or not guilty.

Where the offence renders the offender, if convicted, liable to more than three months' imprisonment, the defendant must be told that he has a right to be tried by a jury (*a*). Where this is claimed, the case is dealt with as though it were an indictable one.

If defendant admits the charge and pleads guilty, the justices may at once determine the case. If the defendant does not plead guilty, or admit the charge, the case is then gone into.

The complainant, or informant, or his counsel states his case, his witnesses are examined, cross-examined, and re-examined ; and then the defendant states his case—can be examined himself and cross-examined, and then his witnesses are examined, cross-examined, and re-examined. The justices then adjudicate

Bail.

Magistrates are empowered to grant bail ; and, indeed, it has been enjoined upon them most strongly that on all possible occasions bail should be granted. See title "Bail," General Subjects, *post*.

Either before or during the hearing the justice or justices may adjourn the hearing to a time and place then appointed.

Details as to "Practice" in dealing with cases coming before the courts are given in Stone's Justices' Manual (*b*) (37th ed.), but general rules as to procedure in matters of a criminal and *quasi*-criminal character are given in body of work under heading General Subjects, arranged in alphabetical order.

(*a*) This does not apply to cases of assault.
(*b*) Published annually by the publishers of this work ; price 25*s*.

LEGAL PRINCIPLES AND DEFINITIONS.

The Law of England is divided into two kinds—(1) the common law and (2) the statute law.

(1) *The common law* includes the general customs, or the common law properly so called; also the particular customs of certain parts of the kingdom.

(2) *The statute law* is made by Act of Parliament.

Ignorance of the law is no excuse for breaking it, as every person is supposed to know the law.

A sane man is conclusively presumed to contemplate the natural and probable consequence of his own acts, and therefore the intent to kill is conclusively inferred from the deliberate violent use of a deadly weapon.

Crime.—A *crime* is the violation of a right (*c*).

Crimes consist either of Misdemeanors or Felonies. See CONSTABLES. Chap. IV., *post*.

In our law misdemeanor is generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, etc.

Offence means any wrongful act or omission which is not a crime.

LEGAL DEFINITIONS.

Affidavit.—An affidavit is a written statement upon oath taken before a person duly authorised to administer the oath. The term "exhibit" is usually applied to a document referred to in, but not annexed to, an affidavit, shown to the witness when the affidavit is sworn and referred to by him in his evidence.

Bailee. Persons to whom goods are entrusted for a specific purpose, viz., to be conveyed, repaired, etc., are considered "bailees" of such goods. If the bailee converts the goods to his own use he is guilty of larceny.

Burglary is the breaking and entering of the dwelling-house of another in the night time (9 P.M. to 6 A.M.) with felonious intent. See title "Burglary," GENERAL SUBJECTS, *post*.

Certiorari.—*Certiorari* (to be more fully informed) is the name of a writ issued from the King's Bench Division of the High Court of Justice. It commands, in the King's name, the judges and officers of inferior courts to certify and return the records of a cause depending before them, to the end that the party may have more sure and speedy justice.

(*c*) A crime is the violation of a right when considered in reference to the evil tendency of such violation as regards the community at large (4 Steph. Com., 6th ed., p. 94).

Chattel.—A chattel is any article (not in the nature of freehold), either movable or immovable, belonging to a person.

Coercion.—See CONSTABLES, Chap. II., *post*.

Conduct money.—See "Subpœna," p. 18.

Depositions.—See "Information," p. 16.

Embezzlement is the appropriation to his own use by a clerk or servant, etc., of goods or moneys entrusted to him for his master. Embezzlement is a species of larceny.

Exhibit.—See "Affidavit," p. 14.

Felony.—The term "Felony" is applied to nearly all serious crimes under Burglary, Larceny, etc. See CONSTABLES, Chap. IV., *post*.

Compounding Felonies.—Though the bare taking again of a man's goods which have been stolen (without favour shown to the thief) is no offence, yet where a man either takes back the goods or receives other amends on condition of not prosecuting it is a misdemeanor, and so in any other felony an agreement not to prosecute an indictment for reward is a misdemeanor (Treat. 30 J. P. 514).

Under the Larceny Act, s. 108, and the Malicious Injuries Act, s. 66, justices are empowered to arrange a compromise after a summary *conviction* for a first offence against Acts. See under "Larceny." GENERAL SUBJECTS, *post*.

Misprision of felony.—A man who knowing a felony to have been committed, he having been no party to it, conceals it, is guilty of misprision of felony, which is a misdemeanor.

Feræ Naturæ,—Animals. Beasts and birds of a wild disposition, such as deer, hares, coneys in a warren, pheasants, partridges, etc., as distinguished from those *domitæ naturæ*, or tame, such as horses, sheep, poultry, etc. They are not whilst living subjects of absolute property, but a man may acquire a qualified property in them either by his reclaiming and making them tame by art or industry, or by so confining them that they cannot escape, as deer in a park, hares or rabbits in inclosed warren, etc.

Fieri Facias. This writ, usually called *fi. fa.*, is a command to the sheriff to seize the goods and chattels of a party who has been adjudged in any of the King's courts to damage or costs. All personal property may be taken except wearing apparel to the value of £5.

Habeas Corpus.—*Habeas corpus ad subjiciendum* (that you have the body to answer). This, the most celebrated prerogative writ in the English law, is a remedy for a person deprived of his liberty. It is addressed to him, who detains another in custody, and commands him to produce the body, with the day and cause of his capture and detention, and to do, submit to, and receive whatever the judge or court shall consider in that behalf. It may be issued by any division of the High Court of Justice, and runs throughout the King's dominions.

Hue and Cry.—The old common law process of pursuing with horn and voice felons and such as have dangerously wounded another.

Homicide is the killing of a human being by the act of another human being. It may be justifiable, excusable, or felonious. Regarding the

doctrine of "necessity" in case of "homicide," see title "Homicide," GENERAL SUBJECTS, *post*.

Indictment.—An indictment is a written accusation of one or more persons of a crime preferred to and presented on oath by a grand jury. The accusation is called a bill when presented to, and an *indictment* when found by, the grand jury. Twelve grand jurors must find for a "true bill."

Information.—An information is a charge laid before a magistrate. An information in writing and on oath must first be made before a warrant to arrest or to search can be obtained. An information when in writing should contain a simple but full statement and history of all the facts to which the witness can depose. It should be taken as nearly as possible in the witness's own words, and in the first person. The use of technical terms and descriptions should be avoided. Where several persons are charged, the separate acts done by each should be distinctly set forth. The christian and surname of the informant, and of all persons named in his information, should be stated in full; also the time and place of the offence.

Deposition.—A deposition is an information in writing taken *in the presence and hearing of the accused*, which fact should be therein set forth. Should the person who swears the deposition die before the trial, upon proof of his death and that such deposition had been taken on proper form in the presence and hearing of the accused, and that he or his counsel or attorney had an opportunity of cross-examining such witness, the depositions can be read as evidence at the trial.

Infant. An "infant" in law is a person under the age of twenty-one. Under the age of seven years an infant cannot be guilty of felony. See title, "Children," GENERAL SUBJECTS, *post*.

Infanticide is the killing of an infant after it is born.

Kidnapping is a term applied to the offence of child stealing.

Larceny at common law is the wrongful taking and carrying away of the personal goods of another with a felonious intention of converting them to one's own use.

Goods which are not personal chattels at common law have been made the subject of larceny by statute.

Libel.—See title, "Libel," GENERAL SUBJECTS, *post*.

Local authority.—Local authorities are constituted under various statutes and empowered to grant licences or authorised to do some lawful act or to enforce the law. In the majority of cases justices in petty sessions are the local authority in counties, and the mayor and corporation in boroughs. County, district, and town councils are also in many instances "local authorities."

Malice.—A formed design of doing mischief to another. It is either *express*, as when one with a sedate and deliberate mind and formed design kills another, which formed design is evidenced by certain circumstances discovering such intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm; or *implied*, as where one wilfully poisons another. In such a deliberate act the law

presumes malice, though no particular enmity can be proved. "Every one must be taken to intend the natural consequences of his actions." If any one acts in exactly the same way as he would do if he bore malice to another, he cannot be allowed to say he does not (4 Steph. Com., 6th ed., p. 160).

Mandamus (we command).—A high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the King's name from the Court of King's Bench, requiring any person, corporation, or inferior court to whom it is addressed to do some thing therein specified which appertains to their office, and which the court holds to be consonant to right and justice. It is issued principally for public purposes and to enforce performance of public rights or duties. It is a general rule that this writ is only to be issued where a party has no other specific remedy.

Misdemeanors.—All crimes and offences of less serious character than felonies, such as assaults, frauds, etc. See CONSTABLES, Chap. IV., *post*.

Misdemeanant.—A misdemeanant is a person who has been convicted of a misdemeanor. They are of the first, second, and third class. Whenever any person convicted of misdemeanor is sentenced to imprisonment *without* hard labour, it shall be lawful for the court or judge to order that such person shall be treated as a misdemeanant of the first division, and a misdemeanant of the first division shall not be deemed to be a criminal prisoner within the meaning of the Act (28 & 29 Vict. c. 126, s. 67).

Misprision.—See under "FELONY," p. 15.

Negligence, culpable.—See title, "HOMICIDE," GENERAL SUBJECTS, *post*.

Night.—The period of darkness between sunset and sunrise. Under several Acts of Parliament "night" begins one hour after sunset and ends one hour before sunrise. Night is so defined under the Night Poaching Act (9 Geo. 4, c. 69, s. 12).

Under the Larceny Act night shall be deemed to commence at nine of the clock of the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day (s. 1 of Act).

Nuisances.—A public nuisance is such an inconvenient or troublesome offence as annoys the community in general and not a few individuals only, and is indictable as a misdemeanor. See title, "NUISANCE," GENERAL SUBJECTS, *post*.

Onus probandi.—Where the "burden of proof" is thrown on the defendant.

Police district.—A police district is any county or division of a county, or any city, borough, or town maintaining a separate police force, and the chief or head constable thereof is the chief officer of police.

Privileged communication.—A privileged communication is that which a witness cannot be compelled to divulge. Communications made in the public interest for the prevention or detection of crime (cases quoted in Taylor on Evidence, 7th ed., vol. i., p. 792) enjoy the same privileges as

those which take place between a husband and wife during marriage, or between a client and his legal adviser, or in the *bonâ fide* discharge of a duty.

Privileged documents.—The official transactions between the heads of the departments of government and their subordinate officers are in general regarded as confidential and privileged matter, which the interests of the State will not permit to be revealed (Taylor on Evidence).

Recognizances.—A recognizance at common law is an obligation duly acknowledged to do a certain thing stipulated. When persons under a rule of bail to keep the peace or be of good behaviour commit a breach of such conditions, the recognizance can be "estreated."

Remands.—Prisoners charged with indictable offences may be remanded from time to time by courts of summary jurisdiction. A justice may remand a prisoner verbally for three days and otherwise for any term not exceeding eight days at a time, and if the court is not at the time a petty sessional court the accused may be remanded to the next practicable sitting of a petty sessional court area if involving an adjournment of more than eight days.

Riot.—A riot is a tumultuous disturbance of the peace by *three or more persons* assembling together with an intent to assist each other in the exercise of some enterprise and afterwards executing the same to the terror of his Majesty's subjects.

An affray is the fighting of *two or more persons* in some public place to the terror of the King's subjects.

Regarding "Unlawful assembly," "Riot," etc., see title, "RIOT," GENERAL SUBJECTS, *post*.

Sacrilege is the breaking and entering with felonious intent any church, chapel, meeting house, or other place of divine worship.

Slander is the malicious defamation of a person in his reputation, profession, or business by words, as a libel is by writing, etc. It is not an offence within the operation of the criminal law unless the words are calculated both in themselves and in their use to provoke an immediate breach of the peace.

Subpœna (*under punishment*).—A subpœna is a writ commanding attendance in court upon a certain day therein named under a penalty. In criminal cases, the subpœna is usually served on a witness to compel his attendance to give evidence or produce documents. Four witnesses can be included in one subpœna.

Conduct money is the sum which must be tendered to a witness for his travelling expenses when a subpœna is served on him requiring him to attend and give evidence.

SECTION IV.

EVIDENCE, ETC.

The word "Evidence" includes all the legal means exclusive of mere argument which tend to prove or disprove any matter of fact the truth of which is submitted to judicial investigation.

Evidence may be classified as—

(1) Primary and secondary (*a*) ;
(2) Sufficient and satisfactory (*b*) ;
(3) Direct and inferential or circumstantial (*c*) ;
(4) Original and second hand (*d*) ;
(5) Oral-documentary (*e*).

For glossary of terms, definitions, etc. see Section III., pp. 14—18, *ante*.

Oath.

All evidence must be given on oath or affirmation. By 51 & 52 Vict. c. 46, every person upon objecting to being sworn, and stating as the ground for such objection that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead

(*a*) A deed itself is the best or primary evidence—a copy thereof is *secondary*.

(*b*) Sufficient evidence is the minimum which will satisfy the requirements of the law. *Satisfactory* is that which satisfies or convinces the court on any given point.

(*c*) *Direct and inferential or circumstantial*.—Where direct evidence is not obtainable the law sanctions the proving of facts by indirect evidence, usually called presumptive or circumstantial. It is more aptly described as "inferential," but such evidence should be admitted cautiously. Circumstantial evidence should be such as to produce nearly the same degree of certainty as that which arises from direct testimony, and to exclude a rational probability of innocence.

(*d*) *Original and second hand*.—What a witness says himself is *original* evidence, but when he repeats what another person has said, this is *hearsay* or second hand evidence.

(*e*) Regarding documents, see heading, "Documentary Evidence," p. 25, *post*.

of taking an oath in all places and for all purposes where an oath is or shall be required by law, and such affirmation shall have the same force as an oath. In the case of Jews, Mohammedans, heathens, etc., the oath is to be administered in such form and mode as, according to the religion of such person, will be a moral obligation (20 J. P. 203).

INCAPACITY.

No person is now excluded by reason of incapacity from crime from giving evidence in person or by deposition (6 & 7 Vict. c. 85, s. 1).

DISSUADING WITNESSES.

Every one commits a misdemeanor who, in order to obstruct the due course of justice, dissuades, hinders, or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavouring to do so.

GENERAL RULES.

The following are some of the general rules of evidence :

That the best evidence the nature of the case will admit of shall be produced at the trial. Hearsay evidence is in general inadmissible (*f*). Conversations and remarks, which were not made in the presence and hearing of the accused, cannot be given.

The "opinion" of the witness as to any fact in issue is inadmissible, unless upon questions of skill and judgment and on questions of identification.

Every person charged with an offence is a competent witness for the defence at every stage of the proceedings, but he cannot be called except on his own application. If he gives evidence he is liable to cross-examination, and cannot refuse to answer any question on the ground that it may incriminate him as to the offence charged.

(*f*) Evidence of a complaint made shortly after a crime is committed is not hearsay, but original evidence. The rule is to admit evidence of *the fact* of the complaint, and nothing more.

PRISONER'S EVIDENCE.

The statement of one prisoner is not evidence for or against another prisoner (*g*) unless charged on a separate indictment. An accomplice may become a witness or "King's evidence" against his fellows, but ought not to be fully relied on without corroboration or collateral proof. No person charged with an offence can be compelled to give evidence for or against himself, nor can any person be compelled to answer any question tending to criminate himself (14 & 15 Vict. c. 99, s. 3). The witness is not the sole judge of whether the questions may tend to criminate him. The court must see that there is reasonable ground to apprehend danger to the witness (*R.* v. *Reynolds* (1882), 46 J. P. 533).

EVIDENCE OF ACCOMPLICE.

It is not a rule of law that accomplices must be confirmed in order to render a conviction valid, but it is usual in practice for the judge to advise the jury not to convict on such testimony alone. *Per* JERVIS, C.J., in *R.* v. *Stubbs* (1855), 25 L. J. M. C. 16.

But in *The Queen* v. *Meunier*, June, 1894, CAVE, J., stated, "I know of no power to withdraw the case from the jury for want of corroborative evidence" (2 Q. B. 415). But WILLS J., withdrew a case from the jury in May, 1895, because the evidence of an accomplice was not corroborated (*R.* v. *Oscar Wilde*, Times, May, 1895).

The counsel for prosecution against several persons for misdemeanor has a right to the acquittal of any defendant whom he proposes to examine (*R.* v. *Rowlands* (1826), R. & M. 401). See title, "ACCOMPLICES," GENERAL SUBJECTS, *post*.

CONFESSIONS (*h*).

Confession of guilt freely and voluntarily made by the accused to any one may be given in evidence, but any evidence which has

(*g*) But where one of two prisoners *jointly indicted* has pleaded guilty, his evidence may be received against the other (*R.* v. *Gallagher* (1875), 39 J. P. 502). If the prisoners be tried *separately* there could be no objection to one prisoner being called as a witness for another prisoner.

(*h*) See also CONSTABLES, Chap. V., *post*.

been obtained from a prisoner in consequence of any threat or promise, or any inducement made to the prisoner by any person concerned in the apprehension, examination, or prosecution of the prisoner, will render such evidence inadmissible (Stephen on Evidence, p. 28); but any facts discovered in consequence of information so obtained may be given in evidence (*R.* v. *Rue*, Somerset Assizes, 1876, 34 L. T. 400). It would appear from this case that to render a confession admissible, it is not so much material to prove to whom or when it is made, as it is to ascertain the mind of the party making it, and to see whether or not it is probable that it was made voluntarily. When a confession is inadmissible, every statement or fact which presumably and reasonably flows from it will be also inadmissible in evidence. Where two prisoners are jointly charged, the confession of one will not be evidence against the other.

An inducement held out or advice given by a fellow prisoner does not render the confession inadmissible (*R.* v. *Parker* (1861), 25 J. P. 374), nor the prosecutor (the master) advising his servant (the prisoner) to answer any questions truthfully, etc. (*R.* v. *Jarvis* (1867), 37 L. J. 1), nor the mistress of the prisoner in the presence of a police officer, saying, "You may as well tell the truth, it is sure to be found out" (*R.* v. *Edwards* (1868), 33 J. P. 119, 145), nor a mother saying to her son, "You had better, as a good boy, tell the truth" (*R.* v. *Reeves* (1872), 41 L. J. 92), nor did a policeman saying to the prisoner, "Now is the time to take it (a purse) back to her" (meaning the prosecutrix), render the statement of the prisoner that he "will make it all up to her," inadmissible in evidence (*R.* v. *Jones* (1872), 27 L. T. 765). It was said there is an increasing feeling against the extension of the rule, and a general opinion that in some cases it had been carried too far. See *R.* v. *Reeves* (1872), L. R. 1 C. C. R. 362, referred to above.

But in a case (May 21st, 1881), where prisoner's employer said to him before any charge had been made, "He" (meaning a police inspector who was present) "tells me you are making housebreaking implements; if that is so, you had better tell the truth, it may be better for you." The Court of C. C. R. held that admissions then made were wrongly received in evidence, and quashed the conviction (*R.* v. *Fennell* (1881), 45 J. P. 666). In a later case, in 1884, the

prosecutor took H. and C., who were in his employ, into his office, where there were two police officers, and said to H., "I know what has been going on between you and C. for some time; you had better speak the truth." He then made a confession, but as it was procured by threat, it was not admissible (*R.* v. *Hatts* (1883), 49 L. T. 780; 48 J. P. 248).

CREDIBILITY OF WITNESS.

The credibility of a witness depends upon his demeanour, the knowledge of the fact he testifies, his disinterestedness, his integrity, his veracity, and his being bound to speak the truth by such oath or affirmation as he deems binding. In all cases of treason two lawful witnesses are required to convict a prisoner. In almost all other cases one witness is sufficient.

The law with respect to the impeachment of the credit of witnesses has been the subject of legislative enactment, and the rules laid down by 28 & 29 Vict. c. 18 are applicable (by s. 1) to all courts of judicature.

COMPETENCY OF WITNESSES.

Every person charged with an offence is a competent witness for the defence at any stage of the proceedings, but he cannot be called except on his own application. He is, of course, liable to cross-examination, and cannot refuse to answer any question on the ground that it would criminate him as to the offence charged. As to cross-examination as to offences other than that with which charged, see 61 & 62 Vict. c. 36, s. 1.

HUSBAND AND WIFE.

By the Criminal Evidence Act, 1898 (*i*) (61 & 62 Vict. c. 36), the wife or husband of a person charged with an offence is made a competent witness for the defence at every stage of the proceedings; but such a witness cannot be called except on the

(*i*) See title, "CRIMINAL EVIDENCE ACT, 1898," GENERAL SUBJECTS, *post*.

application of the person charged, unless the offence is under (a) the Vagrancy Act, 1824 (5 Geo. 4, c. 83); (b) the Poor Law (Scotland) Act, 1845 (8 & 9 Vict. c. 81); (c) the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75); (d) the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); (e) the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 27). Where, however, a person is charged with an offence under any of these Acts, the wife or husband may be called as a witness for the prosecution or defence without the consent of the person charged (s. 4 (1)). The wife or husband of any defendant is admissible as a witness and compellable to give evidence under s. 1 of the Evidence Act, 1877. See title, "WIFE," GENERAL SUBJECTS, *post*.

The wife of one prisoner cannot be called as a witness for another prisoner with whom her husband is jointly indicted (*R.* v. *Thompson*, 36 J. P. 532, 667), unless the husband has pleaded guilty and is removed from the record.

CHILDREN.

The evidence of children of any age is admissible if they appear to understand the moral obligation of an oath or of a solemn affirmation, and under the Criminal Law Amendment Act, 1885, the unsworn evidence of a child of tender years is receivable. Special provisions for taking the depositions of children are made by the Prevention of Cruelty to Children Act, 1894, ss. 13 and 14. The age of a child is immaterial, and whenever any doubt arises as to a child's intelligence the court must satisfy itself by examining the child.

CHARACTER, EVIDENCE OF.

In criminal proceedings the fact that an accused person has a good character is important, but the fact that he has a bad character is unimportant, unless it is itself a fact in issue, or unless evidence has been given that the prisoner has a good character (*R.* v. *Rowton*, L. & C. 520).

GUILTY KNOWLEDGE.

The possession of stolen property *recently* after the commission of a theft is *primâ facie* evidence that the possessor is either the thief or the receiver under the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19. Where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of the proceedings against him. Where the animus or intent of an act has to be shown, then previous and subsequent conduct will be evidence of it. As to guilty knowledge in cases of false pretences, see *R.* v. *Francis*, title "FALSE PRETENCES," GENERAL SUBJECTS, *post*.

DOCUMENTARY EVIDENCE.

The Documentary Evidence Acts of 1845, 1868, 1882 and 1895, prescribe the mode of proving various documents, such as royal proclamations, orders in council, proclamations, and orders or regulations issued by any of the Government departments, including the Board of Agriculture.

The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 24, prescribes mode of proving byelaws made by the council of any borough, and similar provision is made as to proof of byelaws under the Public Health Act, 1875.

By the Bankers' Books Evidence Act, 1879, copies of entries in books by bankers in course of business are admissible (42 & 43 Vict. c. 11), and shall be received as *primâ facie* evidence of such entries. Bankers cannot be compelled to produce such books, except by special order of a judge.

In criminal proceedings every instrument liable to stamp duty is admissible in evidence, although it may not have the stamp required by law, which is not the case in civil proceedings.

Regarding "privileged document" and "privileged communications," see title "LEGAL DEFINITIONS," pp. 17, 18, *ante*.

Handwriting, evidence of.—The handwriting of a person may be proved by the writer himself: by a witness who saw the party write or sign; by a witness who has a knowledge of the person's writing by having seen him write, etc.; by comparison by witnesses acquainted with the writing, or by skilled witnesses of the disputed writing, with any writing proved to the satisfaction of the court to be genuine. He need not be a professional expert (Powell's Law of Evidence).

Previous conviction, evidence of.—As to proof of previous convictions by record or extract of such conviction, signed by the clerk of the court or other officer having the custody of the records of the court where such conviction was made, see title "PREVENTION OF CRIMES ACTS," GENERAL SUBJECTS, *post*.

Depositions—Sick persons.—Depositions properly taken, and where the accused or his counsel or attorney had a full opportunity of cross-examining the witness, are admissible in evidence on the trial of the accused, if it be proved that the person making such deposition is "so ill as not to be able to travel" (*k*), or that he has died, and that the deposition was taken in the presence and hearing of the accused, and that he had an opportunity of cross-examining the witness.

Dying declarations.—In cases of murder or manslaughter where the victim is likely to die, and there is no time to take his deposition in proper form, the statement of the injured person may be taken in the form of a "dying declaration."

Dying declarations may be taken by a police officer, or by any person, but where time permits they should be taken before a magistrate. They need not be in writing, but if possible should be, and in such cases should be signed by the deceased before witnesses. There is no particular form of declaration, nor do they require to be sworn to, the awful situation of the dying person

(*k*) These words extend to a pregnant woman in daily expectation of confinement (*R.* v. *Wellings*); to a person paralyzed (*R.* v. *Cockburn*); but not to a person 74 years of age, afflicted with nervousness and liable to faint, but capable of travelling (*R.* v. *Farrell* (1874), 38 J. P. 391).

being considered equal to the sanctity of an oath. To render dying declarations admissible in evidence it is necessary—

1. That at the time when they were made the declarant should have been in actual danger of death.
2. That he should have had a full apprehension of his danger, and have no expectation or hope of recovery.
3. That the declarant must entertain a settled hopeless expectation of death impending; not on the instant, but within a very short distance of time (*R.* v. *Gloster* (1888), 32 Sol. J. 765: principle, as adopted by CHARLES, J., September, 1888).
4. That death should have ensued.

Although there is no particular form of declaration, yet, in order to comply with the above requirements, it is desirable that it should commence with a statement somewhat as follows: "I, *A.B.*, having the fear of death before me, and being without hope of recovery, state," etc.

The presence of the accused is not necessary, but if he be present he should be permitted to ask his accuser any question he wishes. Dying declarations are admissible only in the single instance of homicide. The declarations of the deceased are admissible only as to matters to which he would have been competent to testify if sworn in the court. They must, therefore, in general speak to facts only, and must be confined to what is relevant to the issue.

The dying declaration of an accomplice is receivable, also dying declarations made in favour of the accused.

EXAMINATION OF WITNESSES.

Direct examination.—The examination of a witness by the party who produces him is called his direct examination or his examination-in-chief. In the direct examination leading questions on material points are not allowed to be put. "Leading questions" are those which suggest to the witness the answer desired or embody the answer, or in general that can be answered by "yes" or "no." A party may lead his own witness in the following cases: On all matters which are merely introductory, and form no

part of the substance of the inquiry; for the purpose of identifying persons or things: when a witness is called to contradict another as to expressions which he denies having used; where the witness appears hostile, by permission of the court; where witness's memory is defective, or the matter of the question complicated. Witnesses must in general speak to facts within their own knowledge, and they will not be permitted, with certain exceptions, to express their own belief or opinion.

Cross-examination.—When the direct examination is finished, the witness may then be cross-examined by the opposite party. In cross-examining a witness leading questions may be asked.

Re-examination.—After a party has been cross-examined, the party who called him has a right to re-examine him on all matters arising out of the cross-examination.

The court has always a discretionary power of recalling witnesses at any stage of the trial, and putting such legal questions to them as the exigencies of justice require. If a question has been omitted in the examination-in-chief, and cannot in strictness be asked on re-examination, as not arising out of the cross-examination, it is usual to request the court to make the inquiry, and such a request is generally granted (Extracts from Taylor on Evidence).

Ordering witnesses out of court.—It is a common practice when a case is called on for hearing to order the witnesses on both sides to leave the court, but if a person who has disobeyed such order by remaining in the room should be offered in evidence by either party, his testimony cannot, it seems, be excluded. In *Roberts* v. *Garrett*, Wilts Lent Assizes, 1842, 6 J. P. 154, which was an action for slander, a witness who continued in court after hearing the order given was called as a witness and objected to by counsel, but ERSKINE, J., held that the party was entitled to his evidence, and all the judge could do was to punish the party by fine or imprisonment for contempt. BYLES, J., ruled in *Selfe* v. *Isaacson* (1858), 1 F. & F. 194, on an application to order all witnesses out of court, that the plaintiff could not be included in the order (Stone's Justices' Manual); and such order does not usually extend to a witness who is a party, nor to a solicitor in the action, nor to scientific witnesses.

Witnesses are privileged, as no action will lie against a witness for what he says or does in giving evidence before a court of justice.

Solicitor's address.—The rule laid down by COLERIDGE, L.C.J., in *R.* v. *Beard* (1837), 8 C. & P. 142, as to the latitude allowed to counsel on an indictment for larceny applies, we conceive, to counsel and solicitors in summary proceedings. If the prisoner does not employ counsel, he is at liberty to make a statement for himself which is to have such weight with the jury as it is entitled to, or he may now be sworn and tender himself as a witness, being liable if he does so to cross-examination, but if he employ counsel he must submit to the rules which have been established with respect to the conduct of cases by counsel, one of which is that he will not be permitted to state anything in his address which he is not in a position to prove (37 J. P. 653). See also remarks of NORTH, J., at Reading Assizes, 1882 (26 Sol. J. 175), and *R.* v. *Fanny Smith* (1882), 46 J. P. 44.

"FROM INFORMATION RECEIVED."

It frequently happens that a police constable starts his evidence with the words "from information received"; in a public prosecution he cannot be made to disclose the name of the informant (*R.* v. *Hardy*, How. St. Tr. 808; *Att.-Gen.* v. *Briant*, 15 Mees. & W. 169; *Marlis* v. *Beyfus*, 24 Q. B. D. 494; 59 L. J. Q. B. 579).

In ordinary prosecutions the question is more open, and a policeman has been ordered to answer the question, "From whom did you get the information"? (*R.* v. *Richardson* (1863), 3 F. & F. 693). If it is plain to the magistrates that the disclosure of the informant is material to the issue, then the name should be disclosed.

Regarding "police witnesses," "police advocates," etc., see CONSTABLES, Chap. IV., *post.*

SECTION V.

SUMMARY JURISDICTION.

The procedure of justices in cases of summary jurisdiction is regulated by the Summary Jurisdiction Act, 1848 (*a*), extended and amended by the Acts of 1879 and 1884 (*b*), *post*, p. 37 *et seq.*

A Schedule to Act of 1879, enumerates certain indictable offences which may be dealt with summarily provided the person charged "consents." Offenders are classified as "adults," "young persons," and "children." See s. 49 of Act of 1879, *post*, and also ss. 10, 11 and 12, and Schedule to Act referred to.

An abridgment of sections of the S. J. Acts is appended, p. 34, with a synopsis of the Indictable Offences Act, 1848, p. 33.

The principal matters dealt with are the issue of summons and warrant, and the service of, or execution of, same, the procedure as to trial, remand, appeal, etc.

As to Summons.

The S. J. Act of 1848 (s. 1) empowers justices to issue summons on information laid or complaint made.

As to Warrants.

Section 2, Act of 1879, provides for issue of warrant if summons be not obeyed, or issue of warrant in first instance if desirable.

Forms of warrant, "backing" of same, execution of warrant, and apprehension in case of "fresh pursuit," are treated of under s. 3 of Act. See also title "Warrants," General Subjects, *post*.

(*a*) 11 & 12 Vict. c. 43, known as "Jervis's" Act.
(*b*) 42 & 43 Vict. c. 49; and 47 & 48 Vict. c. 43.

As to arrest without warrant and discharge on bail by police officer, see s. 38, Act of 1879 (*c*).

AS TO WITNESSES.

As to enforcing attendance of witnesses *within* jurisdiction, see s. 7, Act of 1848, p. 35; *without* jurisdiction, s. 36, Act of 1879, p. 43; as to witnesses refusing to be examined, see s. 7, Act of 1848, p. 35, *post*.

AS TO OPEN COURT.

Cases are to be heard in *open court* (S. J. Act, 1879, s. 20, p. 40, *post*).

"Open court" means a petty sessional court-house or an occasional court-house. As to appointment of police station or other place as an occasional court-house, see s. 20, Act of 1879, p. 40; places so appointed become "open courts" from which the public cannot be excluded. A limitation as to punishment attaches as to cases heard in occasional court-house or before one justice. As to irregularity at hearing, see p. 32.

EXCLUDING PUBLIC.

Sir Richard Webster (when Attorney-General) advised (*d*) that justices have no power to exclude the general public provided they do not interrupt the proceedings, but they may exclude a particular portion of the public such as women and children where evidence is of an indecent character. Courts of quarter sessions are similarly situated. In the event of justices or a court of quarter sessions ordering the public to be excluded, action could be maintained against officer ejecting and the magistrate ordering

(*c*) See also titles "BAIL," GENERAL SUBJECTS, *post*, and "ARRESTS," CONSTABLES, Chap. IV., *post*.
Further provisions are contained in s. 227, Municipal Corporations Act, 1882, amended by S. J. Act, 1884.

(*d*) In an opinion given the County Brewers' Society, January, 1890.

same. In hearing cases magistrates are sitting as a court of justice and are exercising judicial functions, and therefore, except under the special circumstances above mentioned, their proceedings ought not to be private but public.

AS TO REMAND.

Section 16, S. J. Act, 1848, relates to remands (*e*), under the Prevention of Crimes Act, 1871, any person may be remanded for purposes of police inquiry (s. 17). See p. 35, *post*.

TRIAL BY JURY.

See s. 17, Act of 1879, p. 40, as to claim by accused to be tried by jury in certain cases.

APPEAL.

See s. 33, Act of 1879, as to appeal, special case, etc., p. 42, *post*.

IRREGULARITY.

An irregularity or illegality in the mode of bringing a defendant before the justices, if not objected to at the hearing, does not affect the validity of the conviction (*Gray* v. *Commissioners of Customs* (1884), 48 J. P. 343). Various authorities are cited in Stone's Justices' Manual in support of this proposition. A leading case on the subject is *R.* v. *Hughes* (1879), 4 Q. B. D. 614 ; 40 L. T. 685 ; 43 J. P. 556.

INDICTABLE OFFENCES ACT, 1848.

This Act and the Summary Jurisdiction Act of the same year (*f*) contain a complete code of the procedure to be taken by

(*e*) See also Indictable Offences Act, 1848, s. 21, as to remand for *eight days* "by warrant" or for *three days* "verbally," p. 34.

(*f*) These Acts are known as "Jervis's Acts."

justices of the peace in the case of persons committing indictable offences.

The provisions of the Acts dealing with issue of warrant or summons in case of offenders or witnesses—remand, bail, committal, etc., are appended.

INDICTABLE OFFENCES ACT, 1848.
(11 & 12 VICT. C. 42.)

WARRANTS AND SUMMONSES.

S. 1 empowers justices on complaint made to issue warrants in cases of indictable offences. A summons may issue in the first instance.

S. 2.—*Re* issue of warrants for offences on high seas.

S. 3.—*Re* issue of warrant on production of certificate of indictment.

S. 4.—Power to issue warrants on Sundays.

S. 5.—Justices for adjoining counties may act for one county while residing in another.

S. 6.—Jurisdiction of justices in places of exclusive jurisdiction.

S. 8.—In the case of an indictable offence, information on oath must be laid before warrant issue. Information need not be on oath in case of summons.

S. 9.—Upon complaint being laid, justices receiving the same may issue a summons directed to the party charged, or a warrant for his appearance; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed (*g*); and the constable serving shall attend at the time and place in the said summons mentioned to prove service. If the party summoned do not attend, a warrant may issue to compel attendance.

POLICE.

S. 10.—A warrant must be directed to the constable or constables of the district, either by name or generally, and describe briefly the offence and the offender. It remains in force until it is executed.

"BACKING" WARRANTS.

S. 11.—As to the backing of warrants by endorsement for execution in other jurisdictions. See also CONSTABLES, Chap. IV., *post*.

WITNESSES.

S. 16.—Justices may summon witnesses to attend and give evidence, and issue warrant if necessary to compel attendance.

Ss. 17, 18.—As to examination of witnesses, taking of depositions, etc.

(*g*) *Re* details of service, etc. See CONSTABLES, Chap. IV., p. 91, *post*.

"OPEN COURT."

S. 19.—The room in which the justices shall take such examinations *shall not be deemed an open court*, and persons may be excluded therefrom.

S. 20.—As to power to bind over prosecutors and witnesses by recognizance, see s. 42, Summary Jurisdiction Act, 1879.

REMAND.

S. 21.—Justices may remand accused person if for less than eight days by warrant, or for *three days verbally*, and they can accept bail if they think fit.

S. 22.—As to examination and expenses of arrest, conveyance, etc.

BAIL.

S. 23.—Justices *may* admit to bail persons charged with felony and certain misdemeanors Obtaining property by false pretences: Receiving stolen property; Perjury; Concealment of birth; Indecent exposure; Riot; Assault on peace officer; Assault in pursuance of a conspiracy; Neglect of duty as peace officer; and any misdemeanors for which costs may be allowed out of county rate. Justices *must* admit to bail persons charged with other misdemeanors. See also p. 43, *post*, and title "BAIL," GENERAL SUBJECTS, *post*.

COMMITMENT.

S. 26.—The constable or persons to whom a warrant of commitment shall be directed shall convey the accused to the prison mentioned in such warrant, and there deliver him, together with the warrant, to the keeper or governor of such gaol or prison, who shall thereupon give such constable a *receipt for such prisoner*. The justices may make out order on treasurer of county or place for repayment of expenses incurred by constable. If prisoner has money enough to defray expenses, they may order such money to be so applied.

S. 27.—As to copy of depositions in case being supplied to defendant.

S. 29.—Metropolitan police magistrates and stipendiaries can act alone.

Forms of informations, warrants, summonses, etc.

SUMMARY JURISDICTION ACT, 1848.

(11 & 12 VICT. C. 43.)

SUMMONS.

S. 1.—A justice may *issue a summons* requiring the appearance of any person charged with any offence who may be within his jurisdiction.

Every such summons shall be served by a constable or other person to whom the same shall be delivered, upon the person to whom it is directed,

and such constable or person shall attend at the time and place in the summons mentioned to depose to the service of same.

WARRANTS.

S. 2.—If the person so served fails to appear, the justices may, on proof of same, issue a warrant to apprehend offender, or a warrant may issue in first instance.

S. 3.—Every such warrant shall be under the hand and seal of the justice or justices issuing it, and may be directed to any constable by name, or generally to all the constables within the county or district. The *warrant shall remain in full force until it shall be executed*, and such warrant may be executed by apprehending the defendant at any place within the jurisdiction of justices issuing same, or, in case of fresh pursuit, at any place within seven miles of the border of district without having such warrant backed. [Clause as to extension of authority where warrant is generally directed.] Certain provisions of 11 & 12 Vict. c. 42, as to backing of warrants, are to extend to warrants issued under this Act.

VARIOUS MATTERS.

S. 4.—As to description in information of property belonging to partners or corporations.

S. 5.—Aiders and abetters may be treated as principals.

S. 6.—Provisions of 11 & 12 Vict. c. 42, s. 5 (justices in adjoining counties) to extend to this Act.

S. 7.—Witnesses may be summoned or warrant issued to compel attendance. Persons refusing to be examined may be committed for seven days.

S. 8.—Complaints for an order need not be in writing.

S. 9.—Proceedings upon informations, etc.

S. 10. Information (*re* offences tried summarily) may be laid without oath, except where warrant issues.

S. 11. Informations must be laid within six months from time when matter arose.

THE HEARING.

S. 12.—Every such complaint and information shall be tried by one or two or more justices. The room or place in which such justice or justices shall sit shall be deemed *an open and public court* to which the public may have access. Parties can plead and cross-examine by counsel or attorney.

S. 13.—As to proceedings in case of non-appearance of parties.

S. 14.—As to procedure upon hearing of a complaint or information.

S. 15.—Prosecutors and complainants are competent witnesses, if not pecuniarily interested in matter.

S. 16.—Justices can adjourn hearing and commit defendant, suffer him to go at large, or discharge him upon his own recognizance.

S. 17.—As to copy of an order being given to defendant before warrant is issued.

S. 18.—Justices may award costs, recoverable by distress.

WARRANT OF DISTRESS.

S. 19.—Where a conviction adjudges a pecuniary penalty to be paid or an order requires payment, justices may issue a warrant of distress, and if *sufficient distress shall not be found*, then (upon proof of signature), any justice can endorse warrant for execution within his jurisdiction, and the sum shall be levied by distress and sale of the goods of the defendant (*h*).

S. 20.—Power to order defendant into custody until return be made.

S. 21.—If return be made that no sufficient goods or chattels can be found, the justice may issue a *warrant of commitment* to convey the defendant to the house of correction, and there deliver him to the keeper, who is required to receive and imprison him.

S. 22.—Where the statute provides no remedy in default of distress defendant may be committed for not more than three months.

COMMITMENT.

S. 23.—Where the statute makes no provision for distress, but directs that if the penalty be not paid, the defendant shall be imprisoned, the sum shall not be levied by distress; but the justices may issue a warrant of commitment for such time as the statute shall direct, unless the sum, costs, and charges shall be sooner paid.

S. 24.—Justices are empowered to commit where the punishment is by imprisonment, and in such cases *the costs* may be levied by distress.

S. 25.—As to procedure where defendant is *in prison* for any other offence. Imprisonment for the subsequent offence can commence at the expiration of the existing sentence.

S. 26.—As to recovery of costs from the prosecutor by distress if the information be dismissed.

S. 27. (*Appeal.*) As to procedure after an appeal has been heard and dismissed.

PAYMENT OF PENALTY, ETC.

S. 28.—As to payment of distress to constable or gaoler—and release thereon of defendant.

S. 29.—In cases of summary proceedings *one justice* may issue summons or warrant, and after conviction or order may issue warrant of distress, even where by statute two justices must try the matter.

S. 30.—As to payment of clerks' fees.

S. 31.—Penalties levied under warrants of distress shall be paid to justices' clerk, to be paid by him to the parties entitled thereto.

S. 32 legalises the forms in the schedule.

Ss. 33, 34.—Metropolitan police magistrates and stipendiaries may act alone, as may also the Lord Mayor or any alderman of London.

S. 35.—The Act *does not extend* to any warrant or order for the removal of a poor person chargeable to any place; nor to orders as to

(*h*) For procedure, see s. 43 of S. J. Act, 1879, *post*.

lunatics; nor to revenue, stamps, taxes, or post office; nor to warrants in matters of bastardy except as to "backing" of same, levying of sums, or imprisonment of defendant for non-payment.

S. 36.—Repealing clause.

S. 37.—Act not to extend to Scotland or Ireland, except as to backing of warrants.

The Schedule to Act contains forms of warrants, recognizances, etc.

SUMMARY JURISDICTION ACT, 1879.

(42 & 43 VICT. C. 49.)

S. 1.—*Short title* of Act—S. J. Act, 1879.

S. 2.—Act not to extend to Scotland or Ireland.

S. 3.—Commencement of Act, January 1st, 1880. The section provides for the making of any necessary preliminary rules.

PART I.—COURT OF SUMMARY JURISDICTION.

S. 4. **Mitigation of penalties.**—Court may mitigate penalties in case of a first offence: or may in lieu of imprisonment impose a fine not exceeding £25.

S. 5. **Imprisonment.**—The period of imprisonment imposed in default shall be such as the court think will satisfy the justice of the case, but shall not exceed the maximum fixed by the following scale (*i*), viz.:

Where amount adjudged to be paid by a conviction, as ascertained by the conviction,	The period shall not exceed
Does not exceed 10*s.*	7 days.
Exceeds 10*s.* but does not exceed 20*s.*	14 days.
Exceeds £1 but does not exceed £5	1 month.
Exceeds £5 but does not exceed £20	2 months.
Exceeds £20	3 months.

Such imprisonment shall be without hard labour, except the same be authorised.

S. 6. **Civil debt.**—Where a sum of money claimed as due is recoverable on complaint, and not on information, such sum shall be deemed a civil debt, and recoverable as such (*j*).

(*i*) The Act repeals the Small Penalties Act, 1865.

(*j*) See also s. 35.

S. 7. **Time.**—Where any sum of money is adjudged to be paid, the court may—

(1) Allow *time for the payment*;

(2) Direct payment by instalments; or

(3) Accept satisfactory security for payment.

S. 8. **Fees.**—Where a fine does not exceed 5*s*., then (except court orders otherwise) no order shall be made for payment, the fees payable by informant can be remitted, and fine may be appropriated towards payment of costs.

S. 9. **Recognizances.**—(1) Court may declare recognizance forfeited, and may enforce payment thereof [proviso regarding power of court to cancel or mitigate forfeiture].

(2) Court may forfeit a recognizance to keep peace, upon conviction of person bound of any offence which is a breach of the condition of the same.

(3) The recognizances to which this section applies shall be dealt with as in this section mentioned, except notice be given requiring that same be transmitted to court of quarter sessions.

(4) All sums paid in respect of recognizance forfeited shall be paid to the clerk of the court.

S. 10. **Children.**—(1) Where a child (*k*) is charged with indictable offence, if the parent or guardian consent, the court may deal summarily with the offence, subject to certain conditions regarding adequate punishment (*l*), viz.:

Imprisonment to be substituted for penal servitude.

Imprisonment not to exceed one month.

Fine not to exceed 40*s*.

(*Whipping.*) When the child is a male the court may adjudge the child to be privately whipped with not more than six strokes of a birch rod by a constable, in presence of an inspector or other officer of police of higher rank than a constable, and if he desires to be present, of the parent or guardian of the child.

(2) The court may, during the hearing of the case, have the charge reduced into writing and read to the parent or guardian, who may then be asked whether he objects to the case being dealt with summarily.

(3) The court may remand a child to procure attendance of parents at hearing.

(4) This section shall not prejudice the right of the court to send a child to a reformatory or industrial school.

(5) Nor shall it render punishable any child who is not above the age of seven years, and is not of sufficient capacity to commit crime.

(*k*) See also s. 49.

(*l*) See also s. 15.

S. 11.—**Juvenile offenders.**—(1) Where a young person (*m*) is charged with any indictable offence (*n*) specified in schedule to Act (*o*), the court may, if offender consents, deal summarily with the case, inflicting a fine not exceeding £10, or imprisonment not exceeding three months. Males under the age of fourteen may be whipped. See s. 10.

(2) The court may have the charge reduced into writing and read to the accused, who may then be asked whether he consents to the case being dealt with summarily.

(3) This section shall not prejudice right to send offender to reformatory or industrial school.

S. 12. **Adults.**—Where a person who is an adult (*m*) is charged with any indictable offence specified in schedule to Act (*p*), the court, if they think it expedient from all the circumstances of the case, and if the person charged consents, may deal summarily with the offence. Punishment—imprisonment three months, or a fine not exceeding £20. See also Note, s. 16.

The court may have the charge reduced into writing and read to the accused, who may then be asked, "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?"

S. 13. (1) Where a person who is an adult is charged with any indictable offence specified in first column of first schedule to the Act, and not comprised in the second column, if the court during the hearing are satisfied that there is sufficient evidence to put the accused on his trial, and further are satisfied, from all the circumstances of the case, that it may properly be dealt with summarily and adequately punished under this Act, then the court shall cause the charge to be reduced into writing and read to the accused, and if he pleads guilty he may be sentenced to six months' imprisonment with hard labour.

(2) The court, before asking the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he pleads guilty he will be dealt with summarily, and that if he does not plead or answer, or pleads not guilty, he will be dealt with in the usual course. The court shall further state to such person that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence at his trial.

(3) If the prisoner does not plead guilty, whatever he says in answer shall be taken down in writing and kept with the depositions, and may, if necessary, be given in evidence against him.

S. 14. **Previous conviction.**—Where an adult is charged before a court with any indictable offence specified in first schedule to Act, and it appears that owing to a previous conviction the accused is punishable with penal servitude, the court shall not deal summarily with the case.

(*m*) See s. 49.

(*n*) Now extended to *all* indictable offences other than homicide, see S. J. Act, 1899, p. 46, *post*.

(*o*) See first column, first schedule.

(*p*) See second column, first schedule.

S. 15.—**Child.**—A child *on summary conviction* for an offence shall not be imprisoned for longer than one month nor fined more than 40*s*.

S. 16.—**Nominal punishment.**—If upon the hearing of a charge the court think that the offence is of a trifling nature, and that a nominal punishment will suffice,

(1) The court may dismiss the information, and may order accused to pay damages and costs; or

(2) The court upon convicting the person may discharge him conditionally on his coming up for sentence when called upon.

NOTE. But this section shall not apply to an "Adult" convicted on his own plea of an offence of which he could not be convicted had he not pleaded guilty.

S. 17.—**Trial by jury.**—(1) A person charged before a court with an offence *punishable with three months' imprisonment*, and which is not an assault, may, before the charge is gone into but not afterwards, claim to be tried by a jury, and the court shall deal with the case as with an indictable offence.

(2) The court shall before going into the charge inform the defendant of his right to be so tried, and shall ask him, "Do you desire to be tried by a jury?"

(3) If the defendant be a child, the court shall address the above question to the parent or guardian if present.

S. 18.—**Cumulative sentences.**—No cumulative sentence of imprisonment (*q*) for several assaults on same occasion shall exceed six months.

S. 19.—**Appeal.**—Where any person is sentenced to imprisonment without option of fine, a right of appeal to quarter sessions is allowed, provided the defendant did not plead guilty, but section is not to apply to imprisonment for non-payment of money or failing to find sureties or security.

S. 20.—**Court.**—(1) Cases arising under this or other Acts shall be heard, tried, etc., in open court.

(2) "Open court" means a petty sessional or an "occasional" court-house.

(3) A "petty sessional court-house" means a court-house or place where justices usually assemble for special or petty sessions. See sub-ss. (6)—(8).

(4) An "occasional" court-house means such police station or other place as is appointed (as hereinafter provided) to be used as an occasional court-house. See sub-ss. (7), (8), (11).

(5) Justices shall, from time to time, appoint places to be used as "occasional" court-houses.

(6) A court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court-house is in this Act referred to as a "petty sessional court."

(7) No court of summary jurisdiction sitting in an "occasional court-house" shall sentence an offender to a longer term of imprisonment than

(*q*) Save in default of ability to find sureties.

14 days, nor to a fine exceeding 20*s*., and the same power is only given to a justice sitting alone in a "petty sessional court-house."

(8) Indictable offences dealt with summarily under the Act shall not be heard, tried, etc., except by a "petty sessional court" sitting on some day appointed for hearing such offences, or at some adjournment of such court.

(9) As to offences and cases under any future Act.

(10) The Lord Mayor or any alderman of London, and any Police or Stipendiary Magistrate, when authorised to do alone any act authorised to be done by more than one justice, shall be deemed to be a court of summary jurisdiction consisting of two or more justices.

(11) A court of summary jurisdiction, when not a petty sessional court, may adjourn the hearing of any case to a petty sessional court. See S. J. Act, 1848, s. 16.

S. 21.—**Distress warrants.**—(1) Where application is made to a court of summary jurisdiction for a distress warrant or warrant of commitment for non-payment of money, etc., the court may postpone the issue of such warrant until such time and on such conditions as may seem just.

(2) The *wearing apparel and bedding* of a person and his family, and the *tools and implements* of his trade to value of £5, shall not be taken under a distress.

(3) Where, on non-payment of money in certain cases, application is made for distress warrant, and it appears to the court that the person has no goods whereon to levy distress, or that his goods will be insufficient to satisfy the distress, or that levy of distress will be more injurious to him or his family than imprisonment, the court may order such person to be imprisoned for period for which he is liable in default under the order.

(4) Where in default of sufficient distress, a warrant of commitment is applied for, and it appears to the court to whom the application is made, that part of the sum adjudged, either by payment of instalments or otherwise, has been reduced, the court can, under certain conditions, alter the term of imprisonment.

SUPPLEMENTAL PROVISIONS.

S. 22.—As to keeping register of proceedings of court.

S. 23.—As to securities taken in pursuance of Act.

S. 24.—As to remands: The remand (in cases of indictable offences) may be made as under s. 21 of 11 & 12 Vict. c. 42; but if the person be remanded to *the next practicable sitting of a petty sessional court* he may be remanded *for more than eight days.*

S. 25.—As to procedure in case of sureties to keep the peace: maximum imprisonment in default, six months.

S. 26.—As to power to dispense with sureties in case of person committed "in default."

S. 27.—Regulations applicable to indictable offences (ss. 10—13).

S. 28.—As to defrayment of costs of prosecution of indictable offences dealt with summarily.

RULES.

S. 29 (1).—Empowers Lord Chancellor to make Rules as to—
(a) Giving security under Act ;
(b) The forms to be used ;
(c) The charges payable under distress warrants ;
(d) Adaptation to Act of procedure under former Acts ;
(e) Accounts rendered by clerks of courts ;
(f) Any other matter in relation to which Rules are required to be made.
(2) Power to alter Rules.
(3) Rules made to be laid before Parliament.

S. 30.—Empowers justices to provide court-houses, etc. (*r*).

PART II.—AMENDMENT OF PROCEDURE.

S. 31.—As to procedure on appeal, appellant is required to give notice in writing (which may be transmitted in registered letter), signed by appellant or his agent, of intention to appeal, and to give security to appear and to try such appeal.

S. 32 is repealed by Act of 1884.

S. 33.—**Appeal by "Special Case."**—(1) Any person aggrieved who desires to question a conviction, as *erroneous in law*, may apply to the court to state a Special Case, and in case of refusal may apply to the High Court of Justice.

(2) As to mode of application, procedure, etc.

S. 34.—**Summary order.**—(1) Where a power is given by any future Act to a court of requiring any person to do or abstain from doing any act or thing (other than payment of money), and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, annexing such conditions as may seem just.

(2) A person making default in complying with such order shall be punished in the prescribed manner, or may be ordered to pay a sum (enforceable as a civil debt) not exceeding £1 for every day during which he is in default, or to be imprisoned.

S. 35.—**Civil debt.**—Any sum declared a civil debt shall be deemed a sum for payment of which the court has authority to make an order on complaint in pursuance of the S. J. Acts provided that—

(1) No warrant for arrest of person failing to appear shall be issued ;

(2) Nor shall an order for payment be enforced by imprisonment, unless the court are satisfied that the person making default has or has had the means to pay, and has neglected to do so.

(*r*) Powers for the purpose are given under 38 & 39 Vict. c. 89, s. 40, and 31 Vict. c. 22, ss. 4, 5.

S. 36.—**Summons, etc.**—A court of summary jurisdiction may issue a *summons* to a witness beyond the jurisdiction of such court, and any court for the county, borough, or place in which the witness is, may, on proof of the signature to summons, endorse the same, and the witness must obey the summons, and in default may be apprehended.

S. 37.—**Validity of warrant.**—A warrant or summons issued by a justice of the peace under the S. J. Act, 1848, or any other Act, whether past or future, shall not be avoided by *reason of the justice who signed the same dying* or ceasing to hold office.

S. 38.—**Bail.**—A person taken into custody without a warrant shall be brought before a court of summary jurisdiction as soon as practicable after he is so taken, and if it is not or will not be practicable to bring him before a court *within twenty-four hours a superintendent or inspector of police* or other officer of police of equal or superior rank, or in charge of any police station, shall inquire into the case, and, except where the offence appears to such superintendent, inspector, or officer *to be of a serious nature*, shall discharge the prisoner upon recognizance, with or without sureties.

S. 39.—**Procedure.**—The section contains various provisions as to proceedings, etc.

S. 40.—**Certiorari.**—No writ of *certiorari* shall be required for the removal of any conviction, in relation to which a special case is stated by a court of general or quarter sessions.

S. 41.—**Declaration.**—The service of any summons, process, etc., and the handwriting of any justice or other officer on any such warrant or summons may be proved by a declaration taken before a justice or before a commissioner, clerk of the peace, or registrar of county court, and shall be receivable in evidence.

Declarations may be in the form provided by Rules under this Act.

S. 42.—**Recognizances.** When a court has fixed the amount of any recognizance, it may be entered into by the parties before any other court, or before the clerk of the court, or before a superintendent or inspector of police, or before governor of prison. See note, "RULES," p. 46, *post*.

S. 43.—**Distress warrants.** The section contains eight sub-sections setting forth procedure to be followed by constable or other officer executing warrants of distress. See under CONSTABLES, Chap. IV., *post*.

S. 44.—**Prisoners' property.**—As to report to be made by police to court. The court has discretionary power as to return of property.

S. 45.—**Local jurisdiction.**—Where a person is charged with an indictable offence (first schedule to Act) before a court of summary jurisdiction for any county, borough, or place, and the court have jurisdiction to commit such person for trial in such place, although the offence was not committed therein, such court may deal with offence summarily in pursuance of this Act.

S. 46.—For the purposes of the trial of any offence punishable on summary conviction the following provisions shall have effect :

(1) Where the offence is committed in any water which forms boundary of jurisdiction of two or more courts ; or

(2) Where offence is committed on boundary of jurisdiction, or within the distance of five hundred yards of any such boundary, such offence may be tried by any one of such courts.

(3) Where offence is committed in or upon any vehicle, or on board any vessel employed in inland navigation, the accused may be tried by any court of summary jurisdiction through whose jurisdiction such vehicle or vessel passed.

(4) The offence may be dealt with, heard, tried and punished as if it had been wholly committed within the jurisdiction of such court.

PART III.—DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

S. 47.—Application of Act to sums leviable by distress.

S. 48.—As to clerk of court of summary jurisdiction.

SPECIAL DEFINITIONS.

S. 49. :

The expression "child" means a person apparently under the age of twelve years ; "young person" means a person between twelve and sixteen years of age ; "adult" means a person of the age of sixteen years or upwards :

The expression "person" includes a child, young person, and adult : and also includes a body corporate :

The expression "guardian" in relation to a child, includes any person who has charge of or control over such child.

S. 50.—General definition, titles of Acts, etc.

S. 51.—Application of S. J. Acts to future Acts.

S. 52.—Saving for Army Acts, etc.

S. 53.—Application of Acts to Post Office, Revenue, and Customs.

S. 54.—Application and construction of Act.

REPEAL.

S. 55.—There shall be repealed :

(1) The Acts mentioned in the second schedule to this Act as stated in the third column of schedule.

(2) So much of any other Act as is inconsistent with this Act.

FIRST SCHEDULE.

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.

FIRST COLUMN. Young Persons consenting and Adults pleading Guilty.	SECOND COLUMN. Adults consenting.
1. Simple larceny.	1. Simple larceny, where value does not exceed 40*s*.
2. Offences declared by any Act to be punishable as simple larceny.	2. Offences punishable as simple larceny, where value does not exceed 40*s*.
3. Larceny from or stealing from the person.	3. Larceny from the person, where value exceeds 40*s*.
4. Larceny as a clerk or servant.	4. Larceny as a clerk or servant, where value does not exceed 40*s*.
5. Embezzlement by a clerk or servant.	5. Embezzlement by a clerk or servant, where value does not exceed 40*s*.
6. Receiving stolen goods, as specified in ss. 91 or 95 of Larceny Act, 1861.	6. Receiving stolen goods, as specified in ss. 91 and 95 of Larceny Act, 1861, where value does not exceed 40*s*.
7. Aiding, abetting, etc., commission of simple larceny, or offence declared to be punishable as such, or of larceny from the person, or larceny as a clerk or servant.	7. Aiding, abetting, etc., commission of simple larceny, or of offence punishable as such, or of larceny from the person, or larceny as clerk or servant, where the value does not exceed 40*s*.
8. Attempt to commit simple larceny, or offence declared to be punishable as such, or to commit larceny from the person, or larceny as a clerk or servant.	8. Attempt to commit simple larceny, or offence punishable as such, or to commit larceny from the person, or larceny as a clerk or servant.

[The schedule now includes offences mentioned in schedule to S. J. Act, 1899.]

This Act shall apply to any of the following offences when alleged to have been committed by a "young person" in like manner as if such

offence were included in the first column of the schedule; that is to say,

(1) To any offence in relation *to railways* mentioned in ss. 32 and 33 of 24 & 25 Vict. c. 100 (Offences against the Person).

(2) To any offence relating *to railways* mentioned in s. 35 of 24 & 25 Vict. c. 97 (Malicious Injuries).

(3) To any indictable offence under the Post Office Laws: the expression "Post Office Laws" to have the same meaning as in 7 Will. 4 & 1 Vict. c. 36.

SECOND SCHEDULE.

The schedule contains a list of Acts repealed.

The following Acts are wholly repealed: 10 & 11 Vict. c. 82 (Juvenile Offenders); 27 & 28 Vict. c. 80; 28 & 29 Vict. c. 127 (Small Penalties Act).

The following Acts are wholly repealed in so far as relates to England: 13 & 14 Vict. c. 37; 27 & 28 Vict. c. 110; and 18 & 19 Vict. c. 126, except ss. 18, 20, 22, 23, and 24.

S. 2 of 31 & 32 Vict. c. 116, is repealed in so far as it relates to England, as also is s. 13 of 34 & 35 Vict. c. 78.

Also 11 & 12 Vict. c. 43, is repealed in s. 35 from the words "nor to any information" to the words "or post office."

Rules.—Rules referred to in s. 29 were made December 12th, 1879.

NOTE.—The governor of a prison is not required to take the recognizance of any person proposed as surety unless such person can produce a written certificate from a court of summary jurisdiction, or its clerk, that he is able to pay the amount for which he is to be bound (s. 42).

SUMMARY JURISDICTION (PROCESS) ACT, 1881.

(44 & 45 VICT. C. 24.)

Sects. 4, 5, and 6 deal with service of process of English court in Scotland, and of Scotch court in England, execution of process, etc., in England and Scotland. S. 8 defines expressions used in Act.

The "endorsement in backing a process" is given in schedule to Act.

SUMMARY JURISDICTION ACT, 1884.

(47 & 48 VICT. C. 43.)

S. 3 of Act repeals obsolete punishments.

S. 4 repeals certain Acts mentioned in schedule, so far as to bring them into conformity with S. J. Acts.

Sects. 5—12 explanatory of matters referred to in former Acts.

SUMMARY JURISDICTION ACT, 1899.

(62 & 63 VICT. C. 22.)

The provisions of Act are short and simple; it extends provisions of S. J. Act, 1899, s. 11, to *all* offences other than homicide.

It also requires that where a person is charged with offence of obtaining goods or money by false pretences, the term "false pretences" shall be explained to him by the adjudicating justices.

SECTION VI.

LICENSING.

THE Licensing Act, 1904, which came into operation January, 1905, is essentially a Justices' Act, and it has been deemed advisable to introduce into this portion of this work a chapter dealing with the provisions of the Act, and the Rules made under s. 6 of Act. This is prefaced by a summary of the "growth" of the Licensing Laws, arranged in chronological order. For detail of provisions of the various Acts, see "LICENSING LAWS," GENERAL SUBJECTS, *post*.

SUMMARY OF LICENSING LAWS FROM 1828 TO 1904.

In 1828 the laws relative to the licensing by justices of persons keeping, or about to keep, inns, alehouses, and victualling houses to sell excisable liquors by retail to be drunk or consumed on the premises, were reduced into one Act—the Alehouse Act, 1828. This Act is the root of the jurisdiction of licensing justices.

The Act provided that the necessary justices' licenses were to be granted at the general annual licensing meeting (*a*) (popularly known as "Brewster Sessions").

In 1830 it was deemed expedient to give greater facilities for the sale of beer, and the Beerhouse Act of 1830 was passed authorising any householder assessed to the poor rate to obtain from the Excise a licence to sell beer by retail. The justices had no jurisdiction over these licences.

By the Beerhouse Act of 1834 a distinction was made between retail licences for consumption *on* the premises and "off" retail beer licences. The latter were to be granted practically in the same way as under the previous Act. The former were to be granted only on the production to the Excise by the applicant of a certificate as to character signed by six ratepayers of the parish, and certified by the overseers.

(*a*) Now held in month of February in every licensing division (Licensing Act, 1902, s. 14).

In 1840 it was provided by the Beerhouse Act of that year that no retail beer licence, whether *on* or *off*, should be granted to any person who was not the real resident holder and occupier of the premises (*b*).

The law as settled in 1840 remained substantially unaltered until 1869, when the Wine and Beerhouse Act of that year was passed. Meanwhile important modifications of the law as to the grant of "off" licences had grown up, the Excise exercising powers apart from justices under the Revenue Acts, 1861 and 1863.

The law in 1869 stood thus (*c*): The licences to alehouse keepers authorising the sale by retail of any kind of intoxicating liquor for consumption on the premises or elsewhere were completely (*d*) under the control of the justices, and an Excise licence could not be obtained without the production of the justices' licence. The refreshment-house keepers' wine licence authorising the sale of wine for consumption on the premises, was to some extent under the control of justices; but the sale of beer by retail was exempt from their control, as were also the "off" retail sale of wines and the "off" retail sale of spirits in bottles.

By the Wine and Beerhouse Act, 1869, it was provided that none of the retail wine or beer licences should be granted or renewed by the Excise except upon production of a certificate of the justices. Certificates for "on" beer and wine licences (*e*) were to be granted or refused at the discretion of the justices, but certificates for "off" beer and wine licences were only to be refused upon some of the four following grounds: (1) Unsatisfactory character of applicant; (2) unsatisfactory character of house; (3) disqualification of applicant through former convictions; (4) disqualification of house.

The beerhouses which were in existence at this time, and whose licences have been continually renewed under this provision, are known as the "*ante*-1869 beerhouses."

(*b*) The "annual value" was also introduced.

(*c*) The following extracts are taken from Paterson's Licensing Acts (16th edition), edited by W. Mackenzie, M.A., barrister-at-law, issued by the publishers of this work.

(*d*) The case *Sharp* v. *Wakefield*, which bears upon this point, is referred to under heading "LICENSING LAWS," GENERAL SUBJECTS, *post*.

(*e*) An exception was made in the case of "on" beer and wine licenses already in existence. Certificates affecting these were not to be refused except upon some of the "four grounds" above mentioned.

The Act (of 1869) was amended in some particulars by the Wine and Beerhouse Act, 1870.

The Licensing Act of 1872 introduced more uniformity into the management of houses by requiring a justices' licence or certificate in all cases where intoxicating liquor is sold by retail. It introduced a uniform mode of application to justices for a licence and a uniform mode of granting, renewing, or transferring licences.

The Licensing Act of 1874 did not attempt to disturb the settlement contained in the Act of 1872, but merely corrected one or two anomalies. The hours of closing were recast and an "early closing" licence was introduced on the model of the six-day licence of the Act of 1872. The exemption from the closing regulations in favour of travellers and lodgers was defined (*f*).

In 1881 Sunday closing was introduced into Wales by the Sunday Closing (Wales) Act, 1881.

In 1901 the Intoxicating Liquor (Sale to Children) Act forbade the sale of liquor to children (under fourteen) save in quantities not less than one reputed pint in corked and sealed vessels for consumption off the premises only.

In 1896 a Royal Commission was appointed to inquire into the operation and administration of the laws relating to the sale of intoxicating liquors. The report was published in 1899. The main legislative outcome of this report was the Licensing Act of 1902. This Act is divided into four parts :

Part I. amends the law as to drunkenness. See title "DRUNKENNESS," GENERAL SUBJECTS, *post*.

Part II. amends the licensing laws. See title "LICENSING LAWS," GENERAL SUBJECTS, *post*.

Part III. introduces new provisions as to the registration of clubs. See title "LICENSING LAWS," GENERAL SUBJECTS, *post*.

Part IV. contains certain supplemental provisions.

In addition to the consents granted by justices for special occasions—the orders exempting the holder from the hours of

(*f*) As to *bonâ fide* travellers, see case of *Penn* v. *Alexander* under heading "LICENSING LAWS," GENERAL SUBJECTS, *post*.

closing his premises and the early closing licence—the following licences must be obtained from the licensing justices before the excise licence can be granted :

1. *Alehouse licence.*—To sell by retail for consumption *on* or *off* premises.

2. *Beerhouse licence.*—A certificate to retail beer for consumption *on* or *off* premises.

3. *Cider and perry licence.*—A certificate to retail cider and perry for consumption *on* or *off* premises.

4. *Wine licence* to a refreshment house or eating-house keeper or confectioner to retail wine for consumption *on* or *off* premises.

5. *Licence for sale of sweets* in refreshment houses, etc., under provisions similar to wine licence (No. 4).

"OFF" LICENCES.

6. *Beerhouse licence.*
7. *Table-beer licence.*
8. *Cider licence.*
9. *Wine licence* to shopkeeper.
10. *Sweets' licence* to shopkeeper.
11. *Beer-dealer's additional retail licence.*
12. *Spirit dealer's additional retail spirit licence.*
13. *Spirit dealer's additional liquor licence.*
14. *Wine dealer's licence.*

These three last-mentioned licences (Nos. 12, 13, 14) are what are popularly known as "grocers' licences," and come under the provisions of s. 10 of the Licensing Act, 1902.

LICENSING ACT, 1904.

The Licensing Act of 1904, which came into operation on January 1st, 1905, is essentially a justices' Act, and it is difficult to over-estimate its importance and the changes which it will bring about.

This Act amends the law for the extinction of "on-licences," the grant of new licences, and the question of transfers ; but it

does not affect "off-licences" or licences for cider alone or sweets alone.

The justices may by this Act deal with *ante*-1869 beerhouses in the same manner as other licensed premises, save that the grounds mentioned in s. 8 of the Wine and Beerhouse Act, 1869, are to be substituted for the grounds mentioned in this Act. Compensation for the non-renewal of an *ante*-1869 beer licence will be greater than that given in the case of other licensed premises.

As the law stood prior to the Act the renewal of licences in force and the granting of new licences was vested in the justices of a county licensing district and in the borough justices in a borough. The existing licences were renewed as a matter of course unless notice of objection was given. If objection was made to the renewal of a licence the justices had an absolute discretion (*g*) to refuse or grant the renewal, with an appeal to quarter sessions in case of refusal.

By the new Act the power of licensing justices to refuse the renewal of an on-licence is restricted to four grounds :

I.—That the premises have been ill-conducted.

II.—Structural deficiency or unsuitability.

III.—The unsatisfactory character or fitness of the proposed licensee.

IV.—That the renewal would be void.

In all other cases the licensing justices can only report to quarter sessions the refusal to renew, and only by payment of compensation can quarter sessions refuse to renew (s. 1).

This compensation has to be found by the trade itself under the mutual insurance scheme, if it may be so called, propounded by s. 3 of the Act.

Quarter sessions can only deal with cases reported to them for the purpose by the justices of the licensing district.

The procedure before licensing justices as to objecting to the renewal of on-licences and hearing objections, will be the same as

(*g*) This discretion had to be exercised judicially. See *Sharp* v. *Wakefield*, "LICENSING LAWS," GENERAL SUBJECTS, *post*.

before the passing of this Act, save that, instead of refusing to renew, the justices must report the case to quarter sessions.

The effect of the Act is that the parties interested may still come before quarter sessions if the renewal is refused; but there is this distinction: Where the licence is refused on any of the four grounds mentioned in this Act (see p. 48, *ante*), the question will be raised by an appeal under the Alehouse Act, 1828, s. 27: but where the licence is refused on some other ground, as, for example, redundancy, the question will come before quarter sessions in the shape of a report from the licensing justices.

Where an appeal is made against a refusal to renew and the licence expires before the appeal is determined, the Commissioners of Inland Revenue may by order permit the person whose licence is refused to carry on his business during the pendency of the appeal upon such conditions as they think just (Licensing Act, 1872, s. 53).

The amount of compensation to be paid on the non-renewal of a licence is governed by s. 2 of this Act.

An important feature of the new Act is the conditions which justices may attach to a new licence, as prior to this Act they could not attach any conditions which would have any legal sanction. Under s. 4 (2) they may attach such conditions as to the payments to be made, the tenure of the licence, and any other matters as they, in the interests of the public, think proper.

This power is subject, however, to their securing to the public as far as they can the monopoly value of the licence. They may also grant a licence subject to the good conduct of the licensee and of the premises for a fixed term not exceeding seven years.

This Act does not, as stated before, interfere with the discretion of the justices as to off-licences, and when the renewal of any such licence is refused no compensation is payable.

The holders of off-licences are under no liability to contribute to the compensation fund. It should always be remembered that holders of off-licences on June 25th, 1902, cannot be refused renewal except on one of the four grounds mentioned in s. 8 of the Wine and Beerhouse Act, 1869.

A Summary of the Act, and of the Rules made in accordance with s. 6 of Act by Secretary of State (December 20th, 1904), are appended :

LICENSING ACT, 1904.

(4 EDW. 7, c. 23.)

An Act to amend the Licensing Acts, 1828 to 1902, in respect to the extinction of Licences and the grant of new Licences.

S. 1. The power to refuse the renewal of an existing "on" licence, on any ground other than the ground that the premises have been ill-conducted or are structurally unsuitable, or grounds connected with the character of the proposed holder or that the licence would be void, "shall be vested in quarter sessions instead of the justices of the licensing district, but shall only be exercised on a reference from those justices, and on payment of compensation in accordance with this Act."

In every case of "refusal" the justices shall specify in writing to the applicant the grounds of their refusal.

Where the justices of a licensing district are of opinion that the question of the renewal of any particular existing "on" licence requires consideration on grounds other than those on which it could be refused by them, they shall refer the matter to quarter sessions, together with their report thereon, and quarter sessions may, if they think it expedient, after giving the persons interested an opportunity of being heard, refuse the renewal of any licence to which any such report relates, subject to the payment of compensation under this Act.

S. 2. Where quarter sessions refuse the renewal of the licence, a sum equal to the difference between the value of the licensed premises and the value which those premises would bear if they were not licensed shall be paid as compensation to the persons interested in the premises.

In the event of disagreement regarding amount payable, the matter shall be determined by the Commissioners of Inland Revenue.

Under subss. (2) quarter sessions may refer matters in dispute to the *county court* if they consider that any question arising "can be more conveniently determined" by same.

COMPENSATION FUND.

S. 3. Quarter sessions shall, in each year (unless they certify that it is unnecessary so to do), impose in respect of all existing "on" licences renewed within their area, charges graduated in the proportion set out in the First Schedule to Act.

A separate account shall be kept by the Commissioners of Inland Revenue of the amount produced by those charges in the area of any quarter sessions, and the amount shall be paid over each year to that quarter sessions.

"Such deductions from rent as are set out in the Second Schedule to this Act may, notwithstanding any agreement to the contrary, be made by any licence holder who pays a charge under this section, and also by any person from whose rent a deduction is made in respect of the payment of such a charge."

Any sums paid to quarter sessions in respect of the charges under this section, or received from other sources for the payment of compensation under this Act, shall be paid to a separate account, and the moneys standing to the credit of that account shall constitute the compensation fund.

Any expenses incurred in the payment of compensation under this Act, or of their powers, by justices or quarter sessions, shall be paid out of the compensation fund, due regard being had to the funds available for the purpose.

Power is given to borrow money on security of fund.

PROVISIONS AS TO NEW LICENCES.

S. 4. The power of the county licensing committee (s. 37, Licensing Act, 1872) to confirm new licences, and any other power of that committee shall be transferred to quarter sessions.

The justices on the grant of a new "on" licence, may attach to the grant such conditions as to payments and tenure and other matters as they think proper in the interests of the public, subject to certain conditions enumerated in section.

The justices may, instead of granting a new "on" licence as an annual licence, grant the licence for a term not exceeding seven years.

Any application for a re-grant of such a licence shall be treated as an application for a new licence.

COMMITTEES.

S. 5. As to division of area into districts and appointment of committees for purposes of Act.

Quarter sessions may delegate their powers and duties to a committee, and, except in a county borough, shall so delegate their power of "confirming" new licences and of determining as to "renewals" thereon, and county licensing committees shall cease to be appointed under the Licensing Act, 1872.

In a county borough the justices shall exercise their powers under the Licensing Acts, 1828 to 1902, as to the renewal of licences through the borough licensing committee appointed under s. 38 of the Licensing Act, 1872.

The justices of any borough, not being a county borough but having a separate commission of the peace, can appoint one of their number to act on the committee appointed under this section by quarter sessions.

RULES, RETURNS, AREAS, ETC.

S. 6. A Secretary of State may make Rules for carrying this Act into effect (*h*). The Rules may provide—

(a) for the provisional renewal of licences which are included in reports of the justices of a licensing district;

(b) for the enforcement of any security given for money borrowed, and as to period of loan (not to exceed fifteen years);

(*h*) Rules, dated December 20th, 1904, have been issued. See p. 56, *post*.

(c) for the management and application of the compensation fund and the audit of accounts;
(d) for constituting, where requisite, committees and officers;
(e) for the procedure of quarter sessions on the consideration of the reports of justices of a licensing district;
(f) for the authentication of documents.

S. 7. As to returns to be made to Secretary of State by quarter sessions as to new licences granted under Act.

S. 8. As to authorities and areas.

APPLICATION OF ACT TO SPECIAL CASES.

S. 9 (1). "The provisions of this Act shall apply to the transfer of an existing on licence as they apply to the renewal of an existing on licence, with the substitution of transfer for renewal."

(2) If justices refuse to renew an existing "on" licence on the ground that the holder has refused to supply suitable refreshment (other than liquor) at a reasonable price, or has failed to fulfil any reasonable undertaking given to the justices, the licence shall be deemed to have been refused on the ground that the premises had been ill-conducted.

(3) Section 19 of the Wine and Beerhouse Act, 1869, and s. 7 of the Wine and Beerhouse Amendment Act, 1870, are repealed, and, in the application of this Act to licences to which the said s. 19 extends, the grounds for refusal mentioned in s. 8 of the Wine and Beerhouse Act, 1869, shall be substituted for the grounds mentioned in this Act.

INTERPRETATIONS.

Interpretations of expressions—"County," "quarter sessions," "on licence," "existing on licence," etc.

Where a provisional grant and order of confirmation of an "on" licence has been made before the passing of this Act under s. 22 of the Licensing Act, 1874, and is subsequently declared to be final under that section, the licence shall, although not in force at the date of the passing of this Act, be deemed to be an existing "on" licence.

S. 10. Short title, construction, etc.

SCHEDULES.

Sched. I. of Act gives scale of maximum charges (for compensation fund) referred to in s. 3 of Act (annual value of premises to be taken as for the purpose of the publican's licence duty).

The schedule gives a graduated scale with a maximum rate of charge of £1 on an annual value under £15 up to £100. Where the value is £900 and over special rates operate in the case of hotels, restaurants, etc.

Sched. II. shows scale of deductions which may be made under s. 3 in cases of unexpired terms. A person whose unexpired term does not exceed one year may deduct a sum equal to 100 per cent. of the charge; in cases of twenty-five years, 10 per cent.

In pursuance of s. 6 of the Licensing Act, 1904, Rules cited as the Licensing Rules, 1904, were made by the Secretary of State for the Home Department, December 20th, 1904.

RULES.

General Provisions.

1. . . . .

2. The expressions "compensation authority," "renewal authority," "registered owner," "licensee," etc., used in the Rules are defined—

"The compensation authority" means, as respects a county, the quarter sessions for that county, and, as respects a county borough, the whole body of justices acting in and for the borough, and in either case includes, with regard to any matter delegated to a committee under sub-section (2) of section five of the Act, the committee to which the matter is delegated;

"The renewal authority" means the justices having power to renew a licence, or, where a committee of justices have power to renew a licence, that committee.

Interpretation Act of 1889 to apply.

3. Any notice required to be published under these Rules by the compensation authority shall be published by advertisement in two local newspapers circulating in the area of that authority, and, if the authority think fit, in such further manner as the authority direct.

4. Notices may be sent by post.

5. The forms to be used are given in Schedule to Rules.

6. Any failure to comply with provisions of Rules with respect to any proceedings before compensation authority shall not render those proceedings invalid unless the compensation authority so direct.

Transmission of List of Referred Licences and Reports.

7. Before the thirtieth day of April, the renewal authority shall send to the compensation authority a list of any matters referred to the compensation authority under s. 1 of Act, together with their reports thereon.

8. As to records to be kept by clerk of renewal authority.

Meetings.

(i) *Preliminary Meeting.*

9. The compensation authority shall in each year hold a meeting (referred to as "the preliminary meeting") for the preliminary consideration of any reports received.

The meeting may be held at any time, but shall in any case be held before the last day of May.

10. The compensation authority shall consider the reports received as a whole, and with regard to the funds at their disposal and the general circumstances and needs of the area.

11. The compensation authority shall send the renewal authority due notice of the date fixed for the preliminary meeting, and the chairman and

any two members of that authority (and any officer specially appointed) shall have the right of attending the preliminary meeting for the purpose of consulting as to the report sent.

[The rule is not to apply in a case where the renewal authority are also members of the compensation authority.]

12. No persons, other than those referred to, shall have a right to be present at the preliminary meeting.

13. Notice is to be sent to the licensee, to the registered owner, and to the renewal authority in the event of non-procedure on report.

(ii) *Principal Meeting.*

14. The compensation authority shall, as soon as may be after the preliminary meeting, hold a meeting (referred to as "the principal meeting") for the purpose of deciding as respects any case of a licence referred to them in which they have decided to proceed under the Act.

15. Public notice of date fixed (not less than fourteen days) must be given, and notices must be sent to the licensee, and to the registered owner of the premises affected, and to the renewal authority for principal meeting.

16. The licensee, the registered owner, and any person interested in the question of the renewal of a licence can obtain from the clerk of the compensation authority, on payment of fee, a copy of the part of the renewal authority's report which relates to the premises.

17. At the principal meeting the compensation authority shall deal with the cases before them in such order as they may determine.

18. Notice of decision arrived at is to be sent to the renewal authority, to the licensee, and to the registered owner of the premises affected, and, if the renewal be refused, to the Commissioners of Inland Revenue.

19. The proceedings at the principal meeting shall be open to the public.

20. Anything which may be done at a supplemental meeting under these Rules may be done at the principal meeting, but anything so done shall be provisional.

(iii) *Supplemental Meetings.—Ascertainment of Persons entitled to Compensation.*

21. Where it is decided to refuse the renewal of a licence, public notice must be given specifying the premises, and stating that, if any person other than the licensee or registered owner claims to have an interest therein, he must (within twenty-one days), send in a written claim giving particulars of the interest claimed.

22. Define "persons interested in the licensed premises" within the meaning of s. 2 (2) Act of 1904.

Paragraphs 23, 24 and 25 relate to claims of persons interested in licensed premises.

26. Each of the persons entitled to compensation shall supply to the clerk of the compensation authority the address to which any notice or other document which is to be sent to him under these Rules is to be directed, and that address is in these Rules referred to as his registered address.

APPROVAL OF COMPENSATION MONEY WHEN AGREED, AND SETTLEMENT OF SHARES.

27. The compensation authority shall hold a supplemental meeting for the purpose of considering whether their approval should be given to any sum agreed upon by the persons entitled to compensation.

28. As to notice of meeting.

29, 30. As to procedure in cases where the persons entitled to compensation agree upon a sum to be submitted to the compensation authority as the amount of compensation money.

31. If the amount of compensation money remains to be determined otherwise than by means of an agreement approved by the compensation authority, the compensation authority shall send a notice of the fact to the Commissioners of Inland Revenue.

32. As to certificate of the Inland Revenue Commissioners in certain cases.

33. The amount (if any) of any costs incurred by the Commissioners of Inland Revenue on an appeal from their decision shall be paid to the Commissioners of Inland Revenue out of the compensation fund; a deduction shall be made from the amount of compensation money divisible equal to the amount so to be paid to the Commissioners.

PAYMENT OF COMPENSATION MONEY.

34, 35, 36. As to time and manner of payment of compensation money to persons entitled thereto, and as to notices to police and others.

GENERAL PROVISIONS AS TO MEETINGS.

37. The compensation authority may require that evidence given at any meeting be given on oath.

38. Power to adjourn meetings and as to notice of adjournment.

39. As to proceedings at meetings, s. 5 (3) of Act to apply.

40. As to reference of questions to the county courts (s. 2 (3) of Act).

PROVISIONAL RENEWAL OF LICENCES.

41. Where the renewal authority refer the question of renewal to the compensation authority, the renewal authority shall grant a renewal of the licence provisionally.

42. If the compensation authority refuse the renewal or transfer of any licence, the licence shall cease to have effect as from the expiration of the seventh day after the date fixed for the payment of the compensation money.

43. Power to renewal authority to grant a further provisional renewal of the licence in case of delay in payment of compensation money.

PROVISIONAL TRANSFER OF LICENCES.

44. Where the justices of a licensing district refer the question of the transfer of a licence to the compensation authority (ss. 1, 9 (1) of Act), those justices shall grant a provisional transfer of licence.

45. Where the question of a transfer of a licence is so referred, the report of the justices with respect to the transfer shall also be transmitted to the compensation authority.

NEW LICENCES.

46. The confirming authority on the confirmation of a new on-licence shall send a notice to the Commissioners of Inland Revenue containing particulars of premises, the conditions (if any) attached to renewal, and duration of licence.

47.—(1) Where the confirming authority desire to vary any conditions attached to the grant of a new licence (s. 4 (6) of Act), they shall send to the justices authorised to grant the licence a statement of the proposed variations.

(2), (3), (4). As to meeting to be held and procedure adopted.

OFFICERS.

48.—The clerk of the peace shall be ex-officio clerk to any committee appointed by quarter sessions for purposes of Act in a county; in a county borough the clerk to the licensing justices shall be ex-officio the clerk to any committee appointed by those justices under or for the purposes of the Act. The clerk can act by deputy.

49.—The compensation authority shall appoint some person or some bank to be their treasurer.

50. Other officers may, with the consent of the Secretary of State, be appointed if necessary.

51. The remuneration of officers appointed shall be fixed by the compensation authority with the consent of the Secretary of State.

DIVISION OF AREA.

52. Where the compensation authority divide their area into districts for the purposes of the Act, they shall forthwith publish notice of the fact, specifying the districts, and shall also notify the Secretary of State and the Commissioners of Inland Revenue.

COMMITTEES OF QUARTER SESSIONS TO BE STANDING COMMITTEES.

53. A committee appointed by quarter sessions (s. 5 of Act) shall be deemed to be a standing committee, and their jurisdiction and proceedings shall not be affected by the termination of the sessions at which they were appointed.

AUTHENTICATION OF DOCUMENTS.

54. Except where special provision is made in pursuance of any Act or under these Rules, any documents required for purposes of Act can be sufficiently authenticated on behalf of quarter sessions, or justices of licensing district, or any committee if purporting to be signed by their clerk.

COMPENSATION FUND.

55. Where the compensation authority determine to impose any charges (s. 3 of Act), they shall publish notice thereof, and shall also notify the Commissioners of Inland Revenue.

56. As to procedure in case of special rate under note contained in First Schedule to Act.

57. As to sums received, which are to be paid to treasurer.

58. As to fees, which are to be paid into the compensation fund.

59. Payments out of the compensation fund can be made on an order signed by two members of the authority and the treasurer.

60. As to investment of any balance, in excess of current requirements, standing to the credit of the compensation fund.

61. Proper accounts to be kept in connection with the compensation fund, and financial statement to be prepared at the close of each year in form directed by the Secretary of State.

AUDIT.

62.—The compensation authority shall appoint a professional accountant, approved by the Secretary of State, to be the auditor of their accounts.

63. The compensation authority shall submit to the auditor for examination the detailed accounts, with vouchers, etc., and also the annual financial statement required by these Rules.

64. A copy of the financial statement, as certified by the auditor, shall be sent by the compensation authority to the Secretary of State.

BORROWING BY THE COMPENSATION AUTHORITY.

65. All money borrowed shall be repaid within such period, not exceeding fifteen years, as the Secretary of State shall determine in each case.

66. Details as to particulars to be given when applying to Secretary of State for consent to borrow.

67. Every loan raised under the Act shall be by way of mortgage of the compensation fund.

68. The compensation authority shall provide for the repayment of every loan either by instalments or by means of a sinking fund established in accordance with these Rules.

69. Detail as to conditions under which sinking fund can be established.

70. As to power of Secretary of State, in case of failure of compensation authority to comply with the provisions of these Rules with respect to the sinking fund.

71. Where a compensation authority makes default for a period of one month in paying an amount of not less than fifty pounds due in respect of any loan raised under the Act, the persons entitled to the said amount, may, without prejudice to any other remedy, apply to the county court of the district in which the office of the treasurer of the authority is situated for the appointment of a receiver.

PART II.

CONSTABLES.

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CHAPTER I.

ORIGIN OF OFFICE, FORMATION OF FORCES, STATISTICS, Etc.

The constable of the vill, or petty constable, is one of the most ancient officers of the realm for the conservation of the peace, and according to Lord Coke, C.J., the office arose out of the constitution of frankpledge, usually attributed to King Alfred. The constable is, however, first named in the statute of 2 Edw. 3, c. 3.

It is said that "a constable hath as good authority in his place as the Chief Justice of England hath in his"; his powers, as they now exist, are detailed in the respective sections of this work.

The constable is a keeper of the peace, and his most essential duty is the preservation of the peace and the prevention of crime; for that purpose he is armed by law with the power of arrest or

apprehension; but while the law confers upon a constable powers of arrest for certain offences, it at the same time requires that he shall exercise such powers legally and with proper caution.

Every individual appointed to a police force ought seriously to consider the wholly new position in which he is placed by his admission into the constabulary, whereby he becomes a peace officer, and is consequently invested with certain powers by law which he must exercise with great caution and prudence.

Members of the constabulary should always bear in mind that they are a preventive as well as a repressive force—that the prevention of crime is of even greater importance than the punishment of criminals, and that their ceaseless endeavours for this end may operate quite as usefully in maintaining the peace of the country, and infusing into the community a confidence in their vigilant guardianship of person and property, as their most strenuous and successful efforts for the detection and arrest of offenders.

FORMATION OF FORCES.

Police forces were first established in boroughs under the Municipal Corporations Act, 1835, for which the Act of 1882 (*a*) is now substituted, and in counties under 2 & 3 Vict. c. 93 (1839), amended by 3 & 4 Vict. c. 88 (*aa*).

The establishment of county forces was made compulsory by 19 & 20 Vict. c. 69 (1856). These and subsequent Acts—passed in 1859, 1865, and 1890 (*b*)—provide for the appointment, pay, government, and superannuation of the constabulary (*bb*).

Prior to the establishment of police forces the duties of constables were discharged by parish constables, special constables,

(*a*) See "BOROUGH CONSTABLES AND 'TOWNS' POLICE," Chap. VII., *post*.

(*aa*) See "COUNTY AND BOROUGH POLICE," Chap. VII., *post*.

(*b*) For "Synopsis of Sections," see Chap. VIII., *post*.

(*bb*) Every police force in England and Wales is annually inspected by one of his Majesty's inspectors of constabulary (appointed under 19 & 20 Vict. c. 69, s. 15), on whose certificate as to efficiency the grant made to local authorities towards pay and clothing depends.

watchmen, etc. Most of the Acts dealing with these officers are now obsolete: still certain provisions come into operation in exceptional cases and on special occasions (*c*).

The appointment of "parish constables" is now restricted to certain parishes (*d*).

The Acts regulating the appointment of "special constables" (*e*) are 1 & 2 Will. 4, c. 41, and 5 & 6 Will. 4, c. 43, and the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 196, as to special constables in boroughs (*f*). Certain Acts regulate the appointment of constables on public works, canals and navigable rivers (see Chap. VI., *post*), and (under special Acts), in towns. See heading, "Towns Police," Chap. VII., *post*.

"Additional" constables may be appointed on the application and at the expense of private individuals, and when so appointed are considered part of the organised police force (3 & 4 Vict. c. 88, s. 19), "Police Acts," Appendix, *post*.

The Police Act of 1890 replaces the Police Superannuation Act of 1865, and contains new and special provisions regarding superannuation. An epitome of the Act is given in Appendix (Police Acts), *post*.

The County and Borough Police Acts are cited in Sched. A. to Act as "The Police (England) Acts" (*g*). They have, owing to the passing of that Act and other recent legislation, been to a great extent amended, and powers hitherto exercised by quarter sessions are now vested in the standing joint committee of the county council. See title, "Local Government," General Subjects, *post*.

(*c*) Certain duties appertaining to "high constables" now devolve on chief constables of counties. See Chap. VI., *post*.

(*d*) See Parish Constables Act, 1872, Chap. VI., *post*.

(*e*) See Chap. VI., *post*.

(*f*) See Chap. VI., *post*.

(*g*) A "Synopsis of Sections" is given in Chap. VIII., *post*.

COUNTY AND BOROUGH CONSTABLES.

County constables are appointed under the County Police Act, 1839 (2 & 3 Vict. c. 93), s. 6, and are sworn in before two justices at petty sessions.

Borough constables are appointed under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 191. See Chap. VII., *post*.

Exemptions and prohibitions.—Police are exempt from payment of toll when on duty in uniform; they are exempt from serving as overseers or in the Militia: they are restrained from undertaking "other employment for gain or hire." (Police Act, 1839, s. 10).

Voting.—The statutes prohibiting constables from voting at parliamentary elections are repealed by the Police Disabilities Removal Act, 1887 (see Chap. VIII., *post*), and by a later Act (1893) constables are enabled to vote at municipal and other elections. "Canvassing" is prohibited; police are liable to a penalty of £10 if they attempt to "persuade" an elector to give, or "dissuade" an elector from, giving his vote.

Assuming dress of constable.—To assume police dress or take the name, designation, or character of any constable for unlawful purpose is an offence (Police Act, 1839, s. 15).

Actions against police.—Constables render themselves liable to fine or imprisonment for neglect or violation of duty (*h*). They may either be proceeded against criminally, if they have used undue violence, as, for instance, in carrying out an arrest, or an action may be brought against them for wrongful arrest, for false imprisonment, etc. No action can, however, be brought against them for any act done in the execution of their duty, unless it be commenced within *six months* from the doing of such act, and due notice of action given (24 Geo. 2, c. 44, s. 8, and 5 & 6 Vict. c. 97).

(*h*) In *Chisholm* v. *Holland* (1886) it was held that where a constable took from an innkeeper 1*s.* 6*d.* above the licensing fee as a gratuity, there was sufficient evidence of "violation of duty" (50 J. P. 197).

Protection of constables.—Constables are protected in the duties of their office by the provisions of various Acts of Parliament. Under s. 38 of 24 & 25 Vict. c. 100, it is a misdemeanor to assault, resist, or wilfully obstruct any police officer. Under the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), persons assaulting the police are liable to a penalty of £20, or six months' imprisonment; under 48 & 49 Vict. c. 75, they are liable for "resisting or obstructing" to fine of £5 or two months' imprisonment. See "Prevention of Crimes Act," General Subjects, *post*. Persons are also liable to penalties under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

The Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 66, provides that all costs incurred by any justice of the peace or constable in defending any legal proceedings taken against him in respect of any order made or act done *in the execution of his duty* shall, to such amount as shall be sanctioned by the standing joint committee of the county council and quarter sessions, be paid out of the county fund of the county.

As to offences committed on boundaries of counties, in carriages and trains in transit, crimes on the high seas, on shipboard, etc., see "Criminal Law Consolidation Acts," Appendix, *post*.

The metropolitan police have jurisdiction in Middlesex, the adjacent counties, and in the Government dockyards and royal palaces.

Police Statistics.

The total number of police (England and Wales) is 27,878—county, 14,121; borough, 13,757.

The total net cost amounts to £2,586,098 annually: average cost per man, £92 (Government Returns, 1903).

The metropolitan police number 16,683; city police, 1,058.

Criminal Statistics.

The average number of persons for trial on indictment per year (as given for five years preceding 1900) was 11,238. In 1900 it was 10,149, the decrease being attributed to the operation of the Summary Jurisdiction Act, 1899, which empowered justices to try

summary offences heretofore returned for trial to quarter sessions, and which extended the age in the case of youthful offenders, enabling magistrates to deal with persons up to sixteen years of age.

The number tried summarily in 1900 was 760,704.

About 2,200 persons were under police supervision during year 1900, nearly one-half of whom lived in London: about twenty per cent. were re-convicted. Upwards of 31,000 persons are returned as belonging to the criminal classes and at large: over 5,000 are returned (1900) as "habitual criminals," including 1,170 thieves: over 22,000 persons are "incarcerated"—13,000 in local prisons, 5,000 in convict prisons, and 4,000 in reformatories.

Aliens.—A return presented to House of Commons, March 16th, 1905, showed 4,099 convicted aliens in prison in 1903, as against 2,761 in 1900.

The following table, taken from a return issued in 1899 by the Criminal Statistics Department of the Home Office, is still of interest:

CRIMES KNOWN TO POLICE, AND PROSECUTIONS FOR DRUNKENNESS IN 1898.

Proportions *per* 100,000 Population.

AREAS.	Crimes Generally. (All Indictable Offences.)	Crimes against Property.	Crimes against the Person.		Prosecutions for Drunkenness.
			Crimes of Violence.	Crimes against Morals.	
Metropolis	391·56	358·90	11·95	5·72	994·99
Counties. Mining	230·84	211·07	7·19	7·89	1,119·91
Counties. Agricultural: Eastern ...	120·23	107·84	3·22	5·45	123·21
Counties. Agricultural: South-Western	195·86	176·55	6·22	8·70	284·55
Counties. Agricultural: Home	198·07	181·41	4·94	6·32	263·15
Manufacturing Towns	325·93	306·21	6·74	4·00	558·25
Seaports	611·10	575·60	16·72	5·95	11,020·84
Pleasure Towns ...	302·25	282·34	5·93	6·16	387·59
England and Wales ...	284·20	262·83	7·39	5·94	698·37

NOTE.—Generally speaking, the worst counties are those in which urban and seaport populations preponderate. In rural counties the ratio of crime falls.

CHAPTER II.

CRIME AND CRIMINAL INVESTIGATION.

CRIME may be classified under three heads (*a*): felonies, misdemeanors, and minor offences. See p. 14, and Chap. IV., *post*.

Persons guilty of felony and *indictable* misdemeanors are triable at sessions or assizes.

Such minor offences and breaches of the law as are not indictable are tried *summarily* before the magistrates.

Under the Summary Jurisdiction Acts magistrates are able to deal *summarily* with many cases of felony, etc., formerly triable only at sessions or assizes.

Definitions of various crimes and offences are given under "JUSTICES," pp. 14—18, *ante*. The following are specially important to constables:

"*Burglary*" is the breaking and entering *a dwelling-house*—viz., a house in which people habitually sleep—with felonious intent in the *night-time* (between 9 p.m. and 6 a.m.). In this definition there are four things to be considered—(1) the time, (2) the place, (3) the manner, (4) the intent. See title "BURGLARY," GENERAL SUBJECTS, *post*.

"*Housebreaking*" is the breaking and entering a dwelling-house, shop, warehouse, etc., with felonious intention in the *day-time* (6 a.m. to 9 p.m.).

"*Sacrilege*" is the breaking into a church, chapel, or meeting house with felonious intent.

"*Larceny*" is the wrongful taking and carrying away of the goods of another with the felonious intention of converting them to one's own use (*b*).

Larceny is either simple or unaccompanied by circumstances of aggravation; the distinction of *grand* and *petty* larceny is now abolished.

(*a*) As to the methods of making the offender amenable to justices, see Chap. IV., *post*.

(*b*) The case of *R.* v. *Ashwell* (1885), 16 Q. B. D. 190; 50 J. P. 181; Stone's Justices' Manual, 37th edit., pp. 617, 618 (misdelivery), argued before fourteen judges, illustrates the difficulty of defining "larceny" under certain circumstances. See title "LARCENY," GENERAL SUBJECTS, *post*.

"*Bailees.*"—Persons to whom goods are entrusted to be conveyed, repaired, etc., are considered "bailees" of such goods. As to "larceny by bailee," "larceny by finding," "larceny by trick," etc., see title "LARCENY," GENERAL SUBJECTS, *post.*

"*Robbery*" is the felonious taking of goods or money of any value from the person of another, or in his presence, against his will, by violence or putting him in fear.

"*Forgery*" is defined as the fraudulent making or alteration of a writing to the prejudice of another man's right.

"*Embezzlement*" is the appropriation to his own use, by a clerk or servant, of goods or money entrusted to him for his employer. Embezzlement is a species of larceny.

"*Arson*" is the unlawfully and maliciously setting fire to any church, chapel, stable, outhouse, building, stack, crop, etc. See p. 71.

For further information regarding the crimes referred to and for definitions of "murder," "manslaughter," "perjury," "conspiracy," "rape," "concealment of birth," etc., see under the several titles, GENERAL SUBJECTS, *post.*

ATTEMPTED CRIME.

Every attempt (*c*) to commit a felony or misdemeanor, or to incite another person to the commission of an indictable offence, is a misdemeanor unless otherwise provided for by *statute*, as in the case of attempted murder, which is felony.

On an indictment for the offence the party charged may be found guilty of an attempt, if it appear that he did not complete the offence (14 & 15 Vict. c. 100, s. 9); and a person indicted for a misdemeanor is not entitled to be acquitted if the offence turn out to be a felony, unless the court shall so direct.

ACQUITTAL.

A person who has once been tried by a jury for any indictable offence and acquitted of the charge cannot under any circumstances be again tried for it, notwithstanding that additional evidence may subsequently be obtained. This is not the case, however, with prisoners discharged by magistrates, who can be re-apprehended if any new facts are brought to light. See also p. 7.

(*c*) As to "attempt" to pick a pocket where the pocket is empty, see title "LARCENY," GENERAL SUBJECTS, *post.*

Burden of Proof.

The onus of proving that a person is guilty of the crime with which he is charged lies on the person who asserts it. In all criminal proceedings it is for the prosecution to prove their case. The law presumes a man to be innocent until the contrary appear.

Coercion.

If a married woman commits theft or other like offence in the company or by the coercion of her husband, she is not considered guilty, as she is presumed to have acted under his compulsion, and not of her own free will; but this presumption is rebuttable by proof that she acted voluntarily.

In treason, murder, manslaughter, and the like, no presumption of coercion will excuse the wife's guilt.

Criminal Investigation.

The course to be taken in the investigation of crime must to a great extent be left to the discretion of the officer in charge of each particular case, and the success or otherwise of the inquiry will depend on his ability and experience.

In all serious cases of outrage the constable should at once send a messenger to inform his superior officer, he himself proceeding to the scene to make immediate inquiry. Information of the outrage should be circulated as rapidly as possible, and every endeavour made to cut off the escape of the perpetrators.

Detective duties.—Although in difficult or important cases specially trained officers are usually employed as "detectives," yet all the steps taken by a constable to detect a crime after it has been committed come under the head of "detective duties."

It is difficult to exactly define their duties—the circumstances of the case, the nature of the crime, and the class of people with whom the officer comes in contact, must guide him as to the manner of inquiry, and the course to be pursued in each particular case. A detective officer should possess intelligence, tact, and good common sense; the faculty of obtaining information from others, and at the same time keeping his own counsel and opinions.

Information regarding crime is not unfrequently obtained from persons who themselves belong to the criminal classes. Secrecy should be observed regarding the names of these informants.

Note.—An *officer engaged* on detective duty must use every exertion, and adopt any means he legitimately can, to discover the perpetrators of crime, but in doing so he must carefully avoid in any way compromising his own position, or the credit of the service to which he belongs.

The following preliminary steps may with advantage be adopted by constables when investigating murder, burglary, arson, or other serious crime :

Murder.—In cases of murder (*d*) the police should take possession of the dead body. The position in which it is found should be carefully noted, but the body itself should not be moved, unless public decency be offended, until it has been seen by some superior officer. A surgeon should, if practicable, be called in to examine the body, and any natural or other marks noted. The teeth and hands of deceased should be carefully examined, to see if he has grasped any skin, hair, etc., of his assailant. If the deceased is unknown, the body should, if possible, be photographed.

Notes should be made of the condition of the clothing, the position and character of the wound ; and careful search should be made for the weapon, portions of clothing, bullets, gun-wadding, footprints, blood-stains, or anything that would assist in tracing guilt.

The *motive* for the crime should be inquired into and ascertained —whether any one had an ill-feeling towards deceased, or was interested in his death—whether the motive was one of robbery or revenge, etc.—whether the murderer appeared to have an intimate knowledge of the habits of the deceased.

If any person or persons are suspected on good grounds they should be arrested, unless there is reason to believe that an immediate arrest would tend to prevent the discovery of evidence, in

(*d*) See also title "HOMICIDE," GENERAL SUBJECTS, *post*.

which case a discretion as to the time and manner of arrest may be exercised, care being taken that the suspected person do not in the meantime evade justice.

Upon the arrest of the accused, his person and clothing should be carefully searched, and his body examined for marks or wounds caused by any struggle. His clothes should be carefully examined for bloodmarks, which if found should be analysed. The accused's house, lodgings, and effects should be searched for weapons, documents, stained clothing, etc.

If the case be one of *poisoning*, search should be made for bottles, boxes, powders, etc., which should be seized, and all evacuations by vomit, etc., of the deceased should be taken possession of, put into clean vessels, and sealed for analysis.

In all cases of murder the greatest attention should be paid to details.

Regarding "dying declarations," see p. 26, *ante*, and p. 113, *post*.

As to "bigamy," "rape," "concealment of birth," see under their several titles, General Subjects, *post*.

Arson.—A fire may originate in one of two ways: either accidentally or by the act of an incendiary. "Arson" is the malicious and wilful setting fire to any building, etc. In cases of arson it will generally be found that the incendiary bore some malice or ill-will to the owner, although cases of incendiary fire frequently occur where stacks of corn, etc., are set on fire by persons bearing no ill-will to the proprietor, but actuated merely by wantonness and mischief. Occasionally cases occur in which persons in needy circumstances set fire to their own property in order to gain the amount of money for which it is insured, and which in such cases is usually beyond the value of the property insured.

As to duties of constable in case of fire on beat, see p. 81, *post*.

The statutory provisions relating to arson are set out in "Malicious Damages Act, 1861," ss. 1—8, 16—18. See title General Subjects, *post*, and Appendix; also title "Arson," General Subjects.

Burglary.—In cases of burglary (*e*) or housebreaking special notice should be taken of the manner in which an entrance has been effected, with a view to ascertaining whether the outrage has been perpetrated by persons acquainted with the place or by strangers. Inquiry should be made at public-houses, railway stations, etc., to ascertain whether any suspicious persons have been seen about. An accurate description of the articles stolen should be taken and at once circulated to police, pawnbrokers, etc.

Careful search should be made of all adjoining premises, out-houses, sheds, etc., for traces of the thieves or of the stolen property.

Police approaching a house in which burglars are supposed to be should first make sure that the retreat of the thieves is cut off before they enter.

The ground under the windows and around the house should be examined, and if footmarks be found they should be measured and securely covered with boards, or other means of protection, in order to preserve them (see p. 73, 74).

Cattle or sheep stealing.—In these cases careful search should be made not only for the *track* of the animals, but also for the *foot-prints* of the person who drove them : also for wheel-tracks at gateways, gaps at hedges, etc., and the bushes and fences near gaps should be examined for traces of wool or hair. Inquiry should be made in butchers' shops, tan-yards, wool-staplers, and at railway and canal stations, and the police in any neighbouring town where a fair or market is being held should be at once communicated with.

Fowl stealing.—As this description of property is frequently hidden by the thieves in adjoining fields or premises, and subsequently removed, careful search should be made for footprints and tracks of cart-wheels : also for traces of feathers or dead fowl. Should property so hidden be discovered it should on no account be removed, but carefully watched. Persons observed carrying bags or bundles at night or during the early hours of the morning should be watched. If circumstances warrant it they may be stopped and questioned, and the bags or bundles examined.

Pickpockets.—The movements of pickpockets at races, fairs, etc., should be closely watched by the police. The officers

(*e*) See also title "BURGLARY," GENERAL SUBJECTS, *post*.

employed on this duty should wear plain clothes. Pickpockets usually act in concert, some of the party surrounding and jostling the victim, and thus distracting his attention while the property is taken. The watch, purse, etc., stolen, being immediately transferred to a confederate.

Uttering counterfeit coin.—The offence of uttering counterfeit coin is an indictable misdemeanor, but where a person *previously* convicted again commits the offence he is guilty of *felony*. Efforts should be made to obtain possession of the coins tendered or uttered. They should be marked so that they can afterwards be identified. The offenders should be at once apprehended and immediately searched to ascertain if they have any other coins in their possession. Where proceedings are instituted, the Mint authorities should be communicated with.

See title "Coin," General Subjects, *post.*

Threatening letter.—The necessary steps to be taken in a threatening letter case is to ascertain who is the most likely person to send the letter; to obtain evidence, if possible, to prove the *sending;* to obtain proof of the handwriting, which, along with other circumstances, may prove the guilt of the offender. The sending or delivery of the letter need not be immediately by the offender to the prosecutor; if it be proved to be sent or delivered by the offender's means and directions it is sufficient. The envelope in which the threatening letter was received should be carefully preserved.

See also title "Threatening Letter," General Subjects, *post.*

When a threatening letter or any documents which may afterwards be required in evidence is given to a police officer, he should at once enter his initials and the date on the back for the purpose of subsequent identification, but should be careful not to make any mark on the face or written part of the document.

Footmarks.—In comparing footmarks it should be borne in mind that the comparison is *not* to be made by placing the boot or shoe *over* the footmark which has been discovered, but by making a *new impression* by the side of it.

The impression should also be made with the boots or shoes of both feet, and several of those comparisons should be made, and if

possible in the presence of witnesses, the corresponding peculiarities of the boots or shoes with the footmarks discovered and not with the impressions made should be pointed out and immediately committed to paper. A model may be taken of a footmark by running plaster of Paris into it and allowing to set (*f*).

The impressions taken may be employed to assist in these examinations, but *the footmarks which are found* can alone be adduced in evidence, and with these only should the comparison be made. A mere similarity in the sole of a boot or shoe with a footmark is of little or no value in evidence. A striking peculiarity must be detected to render such resemblance valid, such as the loss of a nail or nails, of a plate or piece of a plate, or some other peculiarity or corresponding irregularity, which may identify beyond a doubt the footmarks with the boots or shoes compared with them.

Identification of persons and property.—Regarding the identification of stolen property recovered, it will (where the nature of the article admits) materially strengthen the identification if the article to be identified be placed among others of a similar character, and the owner then asked to point out his own property. In the identification of individuals, the person to be identified should be placed amongst others of his own height and appearance, and of his own position in life.

On July 15th, 1901, an alteration was made in the method adopted for the identification of prisoners. The taking of measurements was discontinued, and the method of identification by finger-prints alone was introduced (*g*). All necessary information on the subject can be obtained at New Scotland Yard, and details of system are contained in a book issued to police entitled "Classification and Uses of Finger Prints" (Home Office Circular, A. 63109, February 3rd, 1902; also Circular of July 3rd, 1903).

(*f*) Special instructions *re* "Castings" are issued by Home Office.

(*g*) The effectiveness of the new system was well illustrated in June, 1903. Sixty persons arrested on the Course at the Epsom meeting were forthwith finger-printed at the Epsom Police Station, and no less than twenty-seven of the number were identified at the Habitual Criminals' Registry Office, New Scotland Yard, the same night, and information as to their antecedents was afforded to the petty sessional court which sat next morning. In several recent cases clues have been obtained through the impressions left on walls, doors and windows of premises entered by thieves and burglars.

e following form shows the method adopted :

RIGHT HAND.

-Right Thumb.	2. R. Fore Finger.	3.—R. Middle Finger.	4.—R. Ring Finger.	5.—R. Little Finger.
ld.)				(Fold.)
\ *Ulnar.*	/ *Radial.*	\ *Ulnar.*	W (*Wall*).	\ *Ulnar.*

Impressions to be so taken that the flexure of the last joint shall be immediately above the black line marked (Fold).

RIGHT HAND.

Plain impressions of the four fingers taken simultaneously.

LEFT HAND.

Plain impressions of the four fingers taken simultaneously.

SWINDLING TRICKS.

The confidence trick.—Of the various devices practised by swindlers, the "confidence trick" is one of the most common. It is usually carried out with the aid of one or more confederates, who persuade their dupe to intrust them with money or valuables, and to allow them to be taken out of his presence for a few moments as a proof of his confidence. Whilst the victim is awaiting their return the swindlers decamp with their plunder. The parties may be indicted for conspiracy to defraud.

Ring dropping is a name given to a fraud which is perpetrated thus: A man apparently picks up a valuable pin or ring, and endeavours to induce some passer-by to give him a sum of money for it, in lieu, as he states, of any reward that may be offered for it. The ring is, of course, valueless.

The purse trick (*h*) is a sleight-of-hand feat, and may be classed with the three-card trick. The method adopted is to seemingly place in a purse three florins or half-crowns, and offer same to bystander for one or two shillings, copper coins being substituted for the silver ones before delivery.

The "stick and button" trick, and a lottery swindle in which labels with numbers are distributed and proceeds handed to holder of winning number, have of late been practised on racecourses.

Ringing the changes is a method of swindling practised when giving or receiving change by pretending that the amount put down was greater than was actually the case, or that sufficient change has not been given (*R.* v. *Hollis* (1883), 12 Q. B. D. 25; 48 J. P. 120 (Stone's Justices' Manual, 37th edit., p. 618).

Mock auctions.—A mock auction consists in the sale of worthless articles at prices far above their value by pretended competition by fictitious bidders. The confederates may under certain circumstances be indicted for conspiracy to defraud the public.

(*h*) *R.* v. *Solomons*, Times, May 20th, 1890, Sol. J. 490; the Court of C. C. R. held there was no larceny (Stone's Justices' Manual, 37th edit., pp. 305, 618, 619). See also "Larceny by Trick," title "LARCENY," GENERAL SUBJECTS, *post*, and title "FALSE PRETENCES."

Long-firm frauds consist in obtaining goods by false pretences from merchants, farmers, etc., by a gang of swindlers, who, by giving each other as references, manage to obtain consignments of goods which they at once dispose of and fail to pay for.

Spanish prisoner.—The swindle known as "the Spanish prisoner" fraud, although frequently exposed in the Press, still finds dupes in this country. The *modus operandi* of the perpetrators is to send to some person in this country (with whom the writer usually claims kinship), a letter from some address in Spain (*i*), representing that he (the writer) is a political prisoner in the possession of considerable wealth, a portion of which he is willing to hand over to his correspondent on condition that he will see to his affairs and to the safety of his child if left an orphan. In some cases it is represented that a portion of the treasure is hidden in this country. After a lengthy correspondence, and the transmission of sundry official looking documents, a request is made for a sum of money sufficient to pay the passage of the child or some agent from Spain to England, or to enable the prisoner to procure the release of documents or plans impounded by the State, which are necessary in prosecuting the search for or obtaining the treasure referred to.

(*Extract*)—The following information, which is found in the original edition of Snowden's Police Guide, although antiquated and to a great extent obsolete, contains some useful hints as to various methods adopted by thieves and swindlers in the perpetration of crime, etc. :

"The tools used and required for housebreaking are a "darkey" (lantern), a crowbar, a centre-bit, keys, skeletons, picklocks, saws, lucifers, knife, pistol, nux vomica, or prussic acid, the use of which I will shortly describe. The "darkey" is often made with two small holes in the bottom to admit of air, being much safer from observation than a covered ventilator at the top, which sometimes emits a stream of light therefrom, and consequently attracts attention. The crowbar is made with one end like a chisel, and the other curved ; its use is to force an entrance by wrenching open

(*i*) Spain was probably selected for the purpose on account of the difficulty of extradition from that country.

doors, drawers, boxes, etc. In forcing open drawers, a piece of cloth is thrown over them, which in a great measure prevents the noise. The centre-bit is a very essential engine in what is termed "panelling," or boring holes in a door with great expedition, when the burglar, by applying a pocket-knife from hole to hole, takes out the panel, and either opens the lock or puts in a boy, who admits the remainder of the burglars. The great object with the thief is, besides obtaining the booty, to give or leave no trace of the property stolen, and whenever opportunity offers, to lock the door again with the skeleton or keys.

"The saw is seldom or never used except in cracking an empty house where the lock or bolt is found to be so strong as not to be forced with a crowbar. A hole is then bored near the lock with a centre-bit; the saw, which is called a key-hole saw, is then introduced, and the piece of the door on which the lock is fixed is cut out. Pistols are often taken more for ornament than use, with burglars. Nux vomica and prussic acid are chiefly made use of to destroy animals of the noisy tribe, the worst of which to keep quiet is a little half-bred terrier of the feminine gender.

"A regularly planted burglary, and committed by thieves who have arrived at the top of their profession, is very bad to make out. A burglary is not the impulse of the moment, but the greatest circumspection is used. A great deal of time has been employed before the burglar determined on his method of entry, and more so when it is not a put-up robbery. Many errands and other calls have been made at the house by confederates, such as hawkers and pedlars, etc.; perhaps a cast is obtained from the key by being pressed into a piece of common soap. Soap is frequently used to conceal articles, as rings, diamonds, coins, etc., which are pressed into a piece of common soap left in its usual place on the washing-stand or table.

"Spanking the glaze is done by one of the well-dressed thieves, accompanied by a shabbily-dressed thief who appears to be a stranger and meets by chance. The thief affects intoxication, runs against the swell gentleman, and between them they break the bottom square of glass. The shopkeeper runs out: the swell asserts how he has been treated by that infamous drunkard, holds out threats that he will have him before his worship the mayor, if

he can only make him out : bows, scrapes, and bids good-bye. A watch is then placed upon the shop to give information when the window is repaired ; the putty being soft can be removed at pleasure : sometimes a small piece of leather containing a little pitch is applied to the glass to prevent it falling, or a little treacle to coarse paper. There is also a method to soften putty in a very short space of time by a chemical preparation.

" Shop-bouncing is performed in various ways, but generally by two, who walk into a country shop where there is an old woman and a candle, buy some trifling article, drop a sixpence, get the old woman to bring the candle round to look for it, while the other fellow is filling his pockets with everything he can secrete.

" Pocket-picking is sometimes done with a wire instrument, made almost like wire for extracting corks out of the inside of bottles ; it has three hooks at the bottom, all turned inwards, with a spring on the top. When the thief thinks he has got hold of his booty he touches the spring, and the hooks close like a crab's claw.

" Shirt pins and pins from a stock, etc., are drawn out by the little finger under the hand.

" An old thief does not alter his dress for some time after he has had a lucky hit, for fear of suspicion.

" Quack doctors are fellows who drop bills at people's houses, and vend their wares at markets and fairs. They are generally composed of worthless ingredients. One fellow sold vegetable pills composed of the most filthy materials, mixed in a box with a little flour or meal.

" Cadger screeving is a system of marking on the flags with chalk short sentences, such as the following :—" Hunger is a sharp thorn, and biteth keen." " I cannot get work, and to beg I am ashamed." Men sometimes make five or six shillings a day at this work.

" Palmers are a set of fellows who generally go by twos, sometimes well dressed, and enter a shop ; if a small one, one of the two keeps the shopkeeper " in a line," asking prices, or requiring a match for a pattern he (the thief) holds in his hand, whilst the other is palming his articles under his hand, and from thence to his pocket. Sometimes a well-dressed woman enters the shop,

apparently a stranger to the men already in, who receives the property from the palmer."

The following is a specimen of flash or cant language in use amongst thieves and itinerant beggars :

Five pound notes	Finnips.
The treadmill	Everlasting staircase.
Trampers' lodging-house	Padding ken.
Boys' lodging house	Padding crib.
Buyers of stolen property	Fences or swag chovey bloaks.
To inform	To come it.
To be wary	Fight cocum.
A policeman	A fly.
An accomplice	Stalsman.
Umbrella menders	Mushroom fakers.
A watch	A yack.
To alter the maker's name in a watch	To christen a yack.
Going without shoes	Gadding the hoof.
To get rid of five-shilling pieces	To work the bulls.

Specimen of Flash Letter.

DEAR DICK,—I have seen the swag chovey bloak, who christened the yacks quick. I gave him a double finnip. I am now on the shallow. I have got the yacks, so do not come it. Fight cocum. I am at the old padding ken, next door to padding crib; I am gadding the hoof; bit quick, be a duffer; now on the square; I want a stalsman, buttoner to nail prads. I last week worked the bulls. I have lost my jomer. Mum now.

Translation.

DEAR RICHARD,—I have seen the person who bought the watches, and he altered the name in them immediately. I gave him a ten-pound note for doing it. I am now going half naked to avoid suspicion. I have got the watches back again; therefore do not turn informer. Be wary and sly; I am stopping at the old lodging-house, next door to the boys' lodging-house; do not say a word, but be very quiet. I am going about without shoes, but shall soon turn hawker. I am at present honest. I want a partner. Will you come and join me, and then we will commence stealing horses. I last week got through a great many bad five-shilling pieces. I have left my fancy girl. Be sure you say nothing.

An expression now in use "struck by lightning," denoting arrest through telegraphic communication, is very descriptive.

CHAPTER III.

POLICE DUTIES.

A CONSTABLE on joining his station should set himself to acquire a knowledge of every street, road, and public place in the town or district in which he is located. He should next acquire a knowledge of the appearance and character of the inhabitants. He should be most civil and courteous, and endeavour, so far as he can consistently with his duty, to make himself popular with all classes. He should make himself well acquainted with the persons and haunts of the criminal class (convicts on licence, habitual convicts, thieves, etc.), in order to be able to bring them forward without delay in the event of their being charged with the commission of any crime ; he should, however, act kindly towards such persons, and endeavour by advice and encouragement to induce them to abandon crime and live honestly.

BEAT AND PATROL DUTY.

The constable is responsible for the security of life and property within his beat, and the preservation of the peace and general good order.

The duties of rural divisions cannot be performed efficiently without the establishment of a proper system of patrols and conferences.

These patrols should not take place on stated nights or at particular hours, but at irregular periods constantly varied.

Fires.—If a fire occurs upon his beat, the constable should endeavour to at once send a messenger to the police station and fire brigade, he himself remaining on the spot to help to save life and protect property. A close watch should be kept on the movements of thieves or suspicious persons to prevent their gaining access to the premises for the purpose of carrying off any portable property.

Deserted children, if found by the police, should be taken to the union. If a child be found by a private person a description of the child should be taken, and the finder directed to the union and informed that he is accountable for its safe delivery there.

REPORTS OF CRIME, ETC.

Crime.—As to the steps to be taken by a constable in investigating certain crimes, see Chap. II., *ante*, pp. 70—73. The scenes of all outrages should be at once visited, and the facts reported. In making inquiries in criminal cases the greatest attention should be paid to details. Officers of short experience are often apt to neglect points which at the moment appear trivial.

Fairs, etc.—Constables should report to their officers when fairs, feasts, etc., are about to take place in their sub-divisions.

WARRANT, SUMMONS, ETC.

As to offences for which a constable can arrest without warrant, see heading, "SUMMARY," Chap. IV., p. 98, *post*. As to service of summons, see p. 104, *post*. The method of "procedure" is important. A constable having served a summons, has to attend at petty sessions to prove (*a*) the service. As to police as witnesses, see p. 105, *post*.

ARREST.

As to a constable's power of arrest with or without warrant, and as to time, manner, and place of arrest, see Chap. IV., pp. 94—97, *post*.

PRISONERS.

Persons arrested by the police should be taken to the "lock-up" of the station or district as soon as possible. As to treatment of prisoners, bail, etc., see p. 109, *post*. As to "searching," "questioning," "cautioning," etc., see Chap V., *post*. As to "handcuffing," see p. 85, and Chap. V., *post*.

INQUESTS.

It is the duty of the constabulary on hearing of any case of sudden death to inquire into the circumstances immediately, and

(*a*) A constable when giving evidence should maintain a quiet and grave demeanour. See p. 106, *post*.

inform the coroner. Should that officer consider it necessary to hold an inquest, he issues his precept to the constable. On receipt of the "precept" the constable is bound to summon (*b*) a jury. From twelve to twenty persons may be summoned: they can, if necessary, be summoned from different parishes.

Licensed Premises.

Offences under the Licensing Acts (*c*) come specially under the cognizance of police (see p. 88). They are required to periodically visit and inspect all licensed houses within their beat or sub-division. When doing so they should on no account accept or partake of refreshment therein. Publicans are liable to severe penalties for treating constables when on duty.

Removal from premises.—A constable can *at the request of the landlord* (*d*) remove anyone from licensed premises, but he is not required to detain him in custody unless he himself has a charge against him.

Police can remove from any premises a person who has forcibly gained admission, or having been admitted refuses to leave when requested.

Gaming.—As to gaming on licensed premises, see title, "Gaming," General Subjects, *post*. "Gaming" is playing at any game for money or money's worth, or for drink (*e*). Playing at any public billiard table or bagatelle board on Sundays, Christmas Day or Good Friday is illegal.

Drunkenness (*f*).

The provisions of the Licensing Act, 1902 (2 Edw. 7, c. 28) greatly enlarges the power of the police in dealing with drunken

(*b*) The constable is usually provided with a "summons book" for the purpose.

(*c*) *Re* Licensing Laws. See under that title, General Subjects, *post*.

(*d*) Licensing Act, 1872, s. 18.

(*e*) Skittles, cards, dominoes, chess, draughts, are not "unlawful games," except when played for money or money's worth.

(*f*) See title "Drunkenness," General Subjects, *post*.

persons on licensed premises or in any public place. Under the Act of 1872 (35 & 36 Vict. c. 94) the police had no power to arrest for *simple drunkenness*. The new Act empowers a constable to *apprehend* anyone who appears to be drunk and incapable (*g*) of taking care of himself, or anyone who is drunk whilst in charge of a child apparently under the age of seven years.

Under s. 12 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), police can apprehend in public place or on licensed premises persons who are drunk and riotous, drunk in charge of any carriage, horse, cattle, or steam engine, or drunk in any place in possession of loaded firearms. See title, "LICENSING LAWS," GENERAL SUBJECTS, *post*.

Military.—When soldiers are drunk but not riotous the police should inform the guard at the military barracks, or the regimental patrol, and request that they may be taken in charge. When soldiers are quarrelling notice should be at once sent to the military authorities, the constable remaining on the spot till assistance arrives. The police should at once interfere if life be in danger or civilians concerned.

Railway premises.—The railway authorities have power to deal with drunken persons or trespassers on their premises or platforms. The police should interfere if a breach of the peace is imminent, and take into their charge persons handed over to them.

BREACHES OF THE PEACE.

The class of misdemeanors with which a constable will most frequently have to deal are assaults and breaches of the peace.

The law regarding assaults is contained in the Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100). See title, "ASSAULTS," GENERAL SUBJECTS, *post*.

Regarding the action of constable in cases of breaches of the peace, see Chap. IV., p. 97, *post*.

(*g*) It is no part of the duty of a constable to remonstrate with or censure a person whom he may find drunk. A helplessly drunken person should not be placed in a cold cell. Excessive drunkenness is a source of danger. As to alcoholic poisoning and antidote, see "FIRST AID TO INJURED," APPENDIX, *post*.

Staff and Handcuffs.

A constable should always carry with him his staff and handcuffs when on duty. Great discretion is required in the use of both handcuffs and staff. A constable is only justified in using his staff or truncheon when he has no other means of protecting himself from injury or preventing a prisoner's escape. Where the truncheon is used blows should not be given on the head or face. A staff is a heavy weapon, and blows delivered with it on the shoulders and arms will generally suffice for the purpose required.

Regarding handcuffing prisoner, see Chap. V., p. 111, *post*. A constable should always be able to show "good special reasons" for handcuffing *unconvicted* prisoners.

In the absence of such reasonable grounds, prisoners charged with drunkenness or trivial offences should not be handcuffed, neither should females or old or infirm persons (*h*).

Riots, etc.

The statute 1 Geo. 1, stat. 2, c. 5, contains the proclamation known as "the Riot Act." See title, "Riots," General Subjects, *post*. On the occasion of any sudden riot occurring in town or village which the police force on duty are not strong enough to suppress, the police should endeavour by their influence with the people to restore order. They should take note of the action of the ringleaders in order that proceedings may be afterwards instituted.

Elections.

On the occasion of parliamentary and other elections, the constabulary are usually employed to prevent rioting and to keep order at the polling stations and entrances to the same. They must render what assistance they can to the sheriff, sub-sheriff, and other authorities.

(*h*) Prisoner should be handcuffed with the arms across the body, and not with the hands palm to palm.

STATUTORY DUTIES.

Duties under statutes.—Constables are required to enforce the provisions of various Acts of Parliament dealing with numerous offences of a criminal and *quasi*-criminal character—the Vagrant Act, the Pedlars Act, the Prevention of Crimes Act, the Criminal Law Consolidation Acts, the Criminal Law Amendment Act, the Poaching Prevention Act, the Licensing Acts, the Chimney Sweepers' Act, the Acts for Prevention of Cruelty to Children, for Prevention of Cruelty to Animals, the Wild Birds Protection Acts, etc., the Dogs Act, etc. They have also certain duties to discharge under the Contagious Diseases (Animals) Act, the Army Acts (regarding billeting of soldiers, deserters, etc.), the Public Health Act, the Town Police Clauses Act, the Gun Licence Act, the Highway Act, the Locomotives on Highways Act, and (if appointed inspectors) under the Acts relating to Explosives, Sale of Food and Drugs, and Weights and Measures.

The following are the leading provisions of some of the statutes referred to. For fuller details see under the various descriptive titles, GENERAL SUBJECTS, *post:*

Vagrancy.—The Vagrancy Act (5 Geo. 4, c. 83) divides vagrants into three separate classes—(1) idle and disorderly persons, (2) rogues and vagabonds, and (3) incorrigible rogues. The Act deals with various offences—begging, betting, suspected persons, "loitering" (*i*), disorderly or indecent behaviour, fortune telling, leaving wife or family chargeable to union, etc. Any person "found offending" can be apprehended, but the person must be *so found* by the constable. As to "relief of vagrants," see title "VAGRANTS," GENERAL SUBJECTS, *post.*

Pedlars Act.—The Pedlars Act, 1871, was passed in order to cope with a class of persons little better than vagrants who, under the guise of pedlars provided with a few paltry wares, went from

(*i*) Suspected persons or reputed thieves found on premises may be apprehended. Section 4 of the Vagrancy Act and s. 104 of the Larceny Act authorises *the arrest* by a constable of any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony against this Act.

house to house to the annoyance of residents and householders. Persons can now only act as pedlars on obtaining a certificate from the police authority, after due inquiry into circumstances and character of applicant.

A police constable can demand the production of certificate and can open and inspect the pack, box, bag, etc., of pedlar, and can arrest uncertificated persons; commercial travellers, sellers of fish, fruit, or vegetables, or persons selling goods in fair or market do not come within the definition of pedlar. See title "PEDLARS," GENERAL SUBJECTS, *post.*

Prevention of Crimes Acts.—These Acts give peculiar powers to the police in dealing with crime and criminals—convicts on licence, supervisees, persons twice convicted of crime, publicans harbouring thieves or receiving stolen goods, brothel keepers, persons assaulting police (who are liable to a penalty of £20 or six months' imprisonment; on second conviction nine months), dealers in old metals, marine store dealers, and "rogues and vagabonds." See "PREVENTION OF CRIME," GENERAL SUBJECTS, *post.*

The Criminal Law Consolidation Acts are a collection of statutes passed in 1861 for the purpose of consolidating and codifying the law relating to the protection of life and property, the protection of the coinage, the offence of forging, and the prosecution of accessories, by which the criminal law was consolidated and amended.

The Acts—six in number—are known as the "Offences against the Person Act," the "Larceny Act," the "Malicious Damage Act," the "Coinage Offences Act," the "Forgery Act," and the "Accessories and Abettors Act." See under the various descriptive title, GENERAL SUBJECTS, *post.*

As to assaults and breaches of the peace, see p. 97, *post.* See also heading "DRUNKENNESS," p. 83, *ante.*

The Criminal Law Amendment Act, 1885, provides special protection in the case of assaults on women and girls. See that title, GENERAL SUBJECTS, *post.*

The Poaching Prevention Act, 1862.—The duties of the constabulary in preventing poaching are very clearly defined in the

Poaching Prevention Act. The Act authorises a constable, under certain circumstances, to stop and search persons *on the highway or in any public place*, and the constable can *seize* any game, gun, net, engine, etc., found on such persons. See title "POACHING" (Poaching Prevention Act, 1862), GENERAL SUBJECTS, *post*.

A constable should act with discretion in discharge of duty and not run the risk of encountering a gang of poachers single handed.

Game Laws.—The killing or taking of game without a game certificate is an offence against the "Game Laws," the duties under which are discharged by the Excise authorities, and not by the police. Police, however, are sometimes required to assist owners and keepers in cases where a breach of the peace with poachers is anticipated, and they frequently act as witnesses in cases of game trespass; but police are not to be employed as gamekeepers or watchers of game. As to game trespass, see title "GAME," GENERAL SUBJECTS, *post*.

The Licensing Acts regulate the sale of intoxicating liquor and provide for the good conduct and order of public-houses. The Acts of 1872 and 1874 are those which specially concern the police. Under these Acts the police have power to enter licensed premises for the purpose of preventing or detecting offences. The offences against the Acts are fully set out in the summary of provisions under head of "LICENSING LAWS," GENERAL SUBJECTS, *post*.

The Licensing Act, 1902, enlarges the power of the police in dealing with drunken persons. See title "DRUNKENNESS," GENERAL SUBJECTS, *post*. The Licensing Act, 1904, rather concerns the justice than the constable. See JUSTICES, SECTION VI. "LICENSING," p. 47, *ante*.

The Chimney Sweepers Acts.—The first of these statutes, dated 1840, was passed in order to prevent cruelties practised on children, illtreating boys compelled to ascend flues. The modern construction of flues, however, has done away with the evil. The Act of 1864 still prohibits to a certain degree the employment of children or young persons. The Act of 1875, which now more immediately concerns the police, requires that chimney sweeps employing assistants shall take out a certificate, which requires to be endorsed if used in districts other than the one for which issued. An Act passed in 1894 prohibits sweeps knocking at

doors, ringing bells, or using noisy instruments for the purpose of soliciting employment. See title "Chimney Sweeps," General Subjects, *post*.

Prevention of cruelty to children.—The Act passed in 1904 (4 Edw. 7, c. 15) repeals and re-enacts with amendments the Act of 1894. See title "Children," General Subjects, *post*.

An Act passed in 1903 (3 Edw. 7, c. 45) places restrictions on the employment of children for gain or hire in public places or on licensed premises.

The Children's Dangerous Performances Act, 1879, prohibits the employment of children under fourteen in dangerous performances, and the provisions are extended to "young persons" under the Act of 1897—males up to sixteen, females to eighteen.

The Infant Life Protection Act, 1897, was passed to make provision for the safety of children placed out to nurse, apart from their parents, for hire or reward.

Children of convicts.—52 & 53 Vict. c. 56 gives the guardians of any union power to provide for and deal with children of convicts, prisoners, etc. An infant (if unweaned) may be received into prison with its mother. An authority from the committing magistrate for the child's admission should accompany the prisoner, but no child can be so received after it is twelve months' old. (Prison Rules, 1878).

Special provision is made for child (up to fourteen years of age) of a convict. See title "Prevention of Crimes Act," General Subjects, *post*.

Prevention of cruelty to animals.—12 & 13 Vict. c. 92, s. 2, defines an offender against the Act as any person who shall cruelly illtreat, over drive, abuse, or torture any animal. The definition of "animal" in the Act included only animals which were of a *domestic* nature; but the Wild Animals in Captivity Protection Act, passed in 1900, now makes it an offence to cause unnecessary pain to or to terrify any wild animal in captivity (*j*). See title "Cruelty to Animals," General Subjects, *post*.

(*j*) The Act applies to beast, bird, fish, and reptile; it does *not* apply to hunting or coursing except in cases where an animal has been liberated in an injured state to facilitate capture.

Wild birds.—The police have power to enforce the Acts passed for the protection of wild birds. See title "BIRDS," GENERAL SUBJECTS, *post*.

The Injured Animals Act, 1894, empowers police, on order of veterinary surgeon, to slaughter injured animal where it is cruelty to keep it alive, even if owner dissents.

Dogs.—*Dog stealing* is not felony at common law, but is punishable by statute (Larceny Act, 1861, s. 18) with fine or imprisonment. A second offence is a misdemeanor.

Mad or dangerous dogs.—Under the Dogs Act, 1871, police can take possession of savage (*k*) or dangerous dogs straying on highway (*l*). By s. 3 of Act local authorities may, if a mad or suspected dog be within their jurisdiction, make orders placing restrictions on dogs not under control.

The Rabies Order, 1897, replaces Order of 1895. See title "ANIMALS, DISEASES OF," GENERAL SUBJECTS, *post*—also title "DOGS."

Cruelty to dogs is punishable by statute 12 & 13 Vict. c. 92. See title "CRUELTY TO ANIMALS," GENERAL SUBJECTS, *post*.

Dogs are not to be used for draught (17 & 18 Vict. c. 60).

Dog licences.—The police have power (41 Vict. c. 15) to take proceedings against persons infringing the provisions of the Dogs Licences Act, 1867. The Excise usually prosecute on police information. Licences expire on December 31st in each year, and have to be renewed in the month of January following. See title "DOGS," GENERAL SUBJECTS, *post*.

The Army Act (1881).—This Act is renewed annually. The provisions which principally concern the police are those relating to "billeting" and "deserters." See titles, GENERAL SUBJECTS, *post*.

(*k*) As to knowledge that a dog is savage (*scientia*), see title "DOGS," GENERAL SUBJECTS, *post*.

(*l*) As to procedure of police in case of finding of stray dog, see title "DOGS" (stray dogs), GENERAL SUBJECTS, *post*. Dogs so found have to be retained for a certain time, and then either destroyed or sold.

The constabulary are required to act as billet masters when required by the military authorities (s. 103 of Act).

Under s. 154 of Act it is lawful for any constable to apprehend and bring before a magistrate any person whom he may reasonably suspect to be a deserter. The constable should, however, before apprehending ascertain whether notice of the desertion appears in the Police Gazette, or he should hold a written authority from the colonel or adjutant of regiment.

Communication received from non-commissioned officer should not be acted on by constables without the authority of their superior officer.

If soldiers are guilty of civil offences they should be arrested like other offenders (notice being given to their commanding officer), and if once placed in the police cells they should be treated as in the case of civilians.

As to police action in cases where soldiers are drunk, see under heading "DRUNKENNESS," p. 84, *ante*. As to criminal procedure, arrest, service of summons (*m*), etc., see title "ARMY ACT," GENERAL SUBJECTS, *post*.

The police are required to serve all notices relating to the Reserve Forces within their districts.

The Public Health Act, 1875.—This Act consolidates and amends the Acts relating to public health in England. The police can enforce certain provisions of the Act relating to nuisances, common lodging-houses, infectious disease, etc. See title "PUBLIC HEALTH," GENERAL SUBJECTS, *post*.

Town Police Clauses Act, 1847.—Some of the provisions of the Act are incorporated in the Public Health Act, 1875. Section 28, regarding obstructions and nuisances in streets, is important to police, who are qualified to act as officers under the Act. See *Kyle* v. *Barbor* (1888), 52 J. P. 725, title "TOWN POLICE CLAUSES ACT," GENERAL SUBJECTS, *post*.

(*m*) No process shall be valid against a soldier if he be under orders for service beyond the seas. Bastardy summons must be served six clear days before the hearing.

Gun Licence Act, 1870.—Gun licences are issued by the Excise (duty, 10*s.*). They expire July 31st in each year.

Every person who shall use or carry a gun elsewhere than in a dwelling-house or the curtilage (*a*) thereof without having a licence in force under the Act shall forfeit the sum of £10.

Certain persons are exempted from the penalty—soldiers, sailors, volunteers, and police carrying guns on duty, occupiers of land using guns for protection of crops, also servants authorised by licensed occupier.

Police can demand the production of the licence, and unless it be produced (or a game licence) the constable should obtain name and address and report matter through his officer to the Inland Revenue. If name and address be *refused*, police can *apprehend*. See also title, "GUN LICENCES," GENERAL SUBJECTS, *post*.

Highway Acts.—Certain provisions of the Highway Acts are enforced by the police, especially those relating to obstructions and nuisances on roads, dealt with under s. 72 of Act of 5 & 6 Will. 4, c. 50. See title, "HIGHWAYS," GENERAL SUBJECTS, *post*.

Persons making fires or encamping within *fifty* feet of the centre of road commit offences.

When offenders are known they should be summoned, but if unknown they may, under s. 79 of the Highway Act of 1864 (27 & 28 Vict. c. 101), be *apprehended* by any surveyor or person acting under his authority or any other person witnessing the commission of the offence.

When a highway is in a dangerous state notice should be given to the surveyor.

Locomotives on highways.—"Heavy (agricultural) locomotives" *can only* be used on highways subject to certain restrictions regarding consumption of smoke, speed, weight, etc. Two persons at least are to be in charge of each locomotive.

"Light locomotives" come under the provisions of the Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), and the Motor Car Act, 1903 (3 Edw. 7, c. 36). Section 1 of Act ("reckless

(*a*) This would probably include enclosed ground adjoining house.

driving") is the principal provision of importance which concerns police. See title, "LOCOMOTIVES ON HIGHWAYS," GENERAL SUBJECTS, *post*.

The Explosives Act, 1875, amends the law regarding making, storing, and carrying gunpowder or other explosives. Inspectors are appointed under the Act, but under s. 73 of Act police have power in cases of urgency to enter on premises to search for and take samples of explosives; and under s. 78 persons found committing certain offences can be apprehended. Gunpowder up to thirty pounds may be kept for private use without restriction; also fireworks for immediate use and various explosives (fog signals, fuses, etc.) for agricultural and railway purposes. See title, GENERAL SUBJECTS, *post*.

The Sale of Food and Drugs Act, 1875, relates to the adulteration of food and medicines. Inspectors are appointed under the Act. See title, GENERAL SUBJECTS, *post*.

The Weights and Measures Act, 1878, requires that all weights and measures used for trading purposes shall be stamped with the stamp of verification and denomination. The Act of 1899 requires that coal shall be sold by weight. See title, "WEIGHTS AND MEASURES," GENERAL SUBJECTS, *post*.

CHAPTER IV.

ARREST—WARRANT—SUMMONS, Etc.

Just as there are three classes of offences (see p. 67), so there are three methods of making the offender amenable to justice, or bringing him before a court competent to deal with him, viz.: I. Arrest without warrant; II. Arrest by warrant; and III. Summons. Arrest is the apprehension and detention of a person for the purpose of bringing him to trial for an alleged or suspected offence against the law.

An arrest on a criminal charge can be made with or without a warrant. A constable's power of arrest without warrant in cases of felony is greater than in cases of misdemeanor.

Arrest without Warrant.

In felonies.—A constable must arrest without a warrant anyone whom he sees in the act of committing a felony. He may also arrest anyone whom he may have just cause to suspect to be about to commit a felony. If a constable suspect a person to have committed a felony he should arrest him, and if he have reasonable ground for his suspicions he will be justified, even though it should afterwards appear that no felony was in fact committed; but the constable must be cautious in thus acting on his own suspicions (*a*).

A constable can also arrest anyone whom another positively charges with having committed a felony, or whom another suspects of having committed a felony, if the suspicion appears to the

(*a*) "*Reasonable suspicion.*"—If there be not "reasonable grounds" for so arresting, the constable will be liable to an action (*Hogg* v. *Ward* (1858), 27 L. J. Exch. 441). Knowledge by a constable that a warrant had been duly issued for felony was held by the Exchequer Division to be a sufficient ground for reasonable suspicion.

As to telegraphic message ("struck by lightning," as it is designated amongst thieves) being a justification for arrest, see 33 J. P. 273.

A magistrate appears to enjoy the same latitude as a constable for arrest on reasonable suspicion.

constable to be well founded, and providing the person so suspecting go with the constable. Where the complainant is not personally known to the constable this is of especial importance. As to "giving into custody," see p. 98, *post.*

In misdemeanors.—As a rule a constable cannot arrest without a warrant in cases of misdemeanor, but where a misdemeanor is committed in the presence of the constable he may arrest the offender without a warrant if the circumstances render such a course necessary, and the delinquent is not known. Information of the commission of a misdemeanor should not under ordinary circumstances be followed by arrest without warrant, except in case of escape from custody, or attempted felonies of a serious character, or in cases where arrest is authorised under some special statute.

If the misdemeanor be an *indictable* one, and committed in his presence, the constable may at once apprehend (*b*).

Arrest by a magistrate.—A magistrate appears to enjoy the same latitude as a constable of arresting a person on reasonable suspicion of having committed a felony without being called upon to prove that the felony has actually been committed (2 Hale, c. 11, s. 13), but he cannot arrest a person who is guilty before his eyes of *a misdemeanor where there is not a breach of the peace* and where there is no necessity to arrest the offender to prevent a renewal of the act, unless specially authorised by Act of Parliament. See *King* v. *Poe* (1866), Irish Courts ; 30 J. P. 678.

Arrest by private individual.—If a felony has been actually committed a party may be arrested by any person on reasonable suspicion of his guilt, but no person can in general be arrested for a mere misdemeanor unattended with violence without a warrant. A private person may apprehend without a warrant on view of breach of the peace and before the affray is over, and deliver offender to a constable. See "Giving into Custody," p. 98, *post.*

Every citizen is virtually a constable, and if a felony has been committed the offender may be arrested by any person on

(*b*) "*Found committing.*"—Power is given under various statutes for the arrest of persons "found committing" offences—which means found *in the act of committing.*

reasonable suspicion of his guilt, *but a private person* can only arrest *at his peril* for crimes not committed in his presence, *whereas a constable* can arrest on *reasonable suspicion.*

General rule.—The general rule is "that for the sake of the preservation of the peace any individual who sees it broken may restrain the liberty of him whom he sees breaking it, so long as his conduct shows the public peace is likely to be endangered by his acts" (*Timothy* v. *Simpson* (1835), 4 L. J. Exch. 81) (*c*).

Warning.—If the constable finds his own exertions insufficient to effect an arrest he ought to warn one or more of the bystanders, "in the King's name," to assist him, and it is an indictable misdemeanor in anyone so warned to refuse. If a prisoner escape he may be retaken, and in immediate pursuit the constable may follow him into any place or any house.

Breaking doors.—Whenever a person is lawfully arrested for any cause and afterwards escapes and shelters himself in a house, the doors may be broken open to retake him.

If a party accused of felony takes refuge in a house, or if persons are fighting furiously in a house, or a felony appears likely to be committed, a constable may *break open the doors*, if necessary, to get in, provided he first demands admission, stating who he is and his business; but the breaking open of outer doors is so dangerous a proceeding, that the constable never should resort to it except in extreme cases, and when an immediate arrest is necessary; but for the execution of warrants admittance should always first be demanded, and in all cases where the warrant is for misdemeanor.

Forcible entry, etc.—If a person forcibly enters the house of another, the constable may, at the request of the owner, turn him out directly; if he have entered peaceably, but having no right to enter, and the owner request the constable to turn him out, the constable should first request him to go out, and unless he do so, he should turn him out, in either case using no more force than is necessary for the purpose. See also titles, "FORCIBLE ENTRY" and "TRESPASS," GENERAL SUBJECTS, *post.*

Time and place of arrest.—A person may be apprehended in the night as well as the day, and in any place. 29 Car. 2, c. 7, s. 6

(*c*) An action for malicious prosecution is not maintainable if the defendant has merely instigated a police officer to attempt to arrest the plaintiff (*Harris* v. *Warre* (1879), 48 L. J. C. P. 310).

(Sunday Observance Act, 1677), prohibited arrests on a Sunday except in cases of treason, felony, or breach of the peace, but it has been held that arrests may be made on a Sunday in any case of indictable offence.

Power is given to justices to *issue* warrants on Sunday. The power to grant the warrant would impliedly legalise its execution, and it would seem from *Rawlins* v. *Ellis* (1846), 16 L. J. Exch. 5, that a warrant for any indictable offence may be executed on a Sunday notwithstanding the Sunday Observance Act referred to.

Mode or manner of arrest.—In order to complete an arrest, the constable must actually touch or restrain the offender. The usual method is to touch the shoulder of the accused and inform him of the charge for which arrested. All arrests should be made quietly, without attracting attention or subjecting the persons to unnecessary exposure or humiliation. If in plain clothes, the constable should state he is a police officer. If the arrest is by warrant, it should be read over to the prisoner as soon as practicable. The warrant may be shown but not parted with.

Generally, if the arrest was made discreetly and fairly in pursuit of an offender, and not for any private malice or ill-will, the constable need not doubt that the law will protect him.

Rewards.—As to rewards for apprehension of felon, see p. 117, *post*.

BREACHES OF THE PEACE.

The class of Misdemeanors with which a constable will most frequently have to deal are Assaults and Breaches of the Peace.

Where breaches of the peace are committed *within his view*, the constable should immediately interfere, separate the combatants, and prevent others from joining in the affray. If the disturbance be of a serious nature, or if the offenders do not immediately desist, he should take them into custody, securing also the principal instigators of the tumult, and do everything in his power to restore order; but if the offenders desist, it is better to take their names and summon them.

In all cases of assault, riot, etc., a constable should exhibit a great amount of forbearance before exercising his powers of arrest.

In the case of an assault *not committed in his presence*, the constable would not be justified in arresting, unless it was evident that a serious assault had been committed or a dangerous wound given. He should, however, in all cases endeavour to ascertain for the complainant the name and address of the person he accuses, and if the parties attempt to renew the affray he can at once apprehend them (*d*).

Giving into custody.—A private person may apprehend without a warrant in view of a breach of the peace, and hand over the offender to a constable, and he is justified in giving in charge (*e*), and a constable in arresting without a warrant a person who has been guilty of a breach of the peace if there are reasonable grounds for apprehending its continuance or renewal.

Abusive language.—If persons be merely quarrelling or insulting each other by words, the constable has no right to take them into custody, but he should be ready to prevent a breach of the peace.

If a person annoys another by abusive language or constantly following him, whereby a breach of the peace may occur, such person can be proceeded against and summoned by the party aggrieved (*f*).

SUMMARY.

The following is a summary of the principal crimes and offences for which a constable can arrest *without* warrant:

Offences against the person.—Murder, rape, bigamy, bestiality.

Offences against property. — Robbery, burglary, larcenies generally, embezzlement, fraud, etc.

(*d*) An interval of two hours (in case of assault) without continued pursuit, is too great to justify arrest (*R.* v. *Walker* (1854), 23 L. J. 123; 31 J. P. 1); an interval of three or four hours was held too great to qualify arrest (without warrant) for "false pretences" (*Downing* v. *Capel* (1867), 36 L. J. 97).

(*e*) The constable should however require the person making the charge to accompany him to the police station or before a magistrate, and where the complainant is not personally known to the constable, this is of especial importance. See Treat. 52 J. P. 385.

(*f*) It is a condition precedent to application, that complainant go "in fear of bodily harm." As to "surety of peace" and "good behaviour," see *Haylock* v. *Sparke* (1853), 22 L. J. 67.

In all cases of fraud, however, the constable will do well to protect himself by the warrant of a justice.

Malicious injuries.—Arson, injuries to houses, goods, trees, fences, etc., killing or maiming cattle.

Forgery and offences against the coinage.

Offences against Penal Servitude and Prevention of Crimes Acts, and for crimes of treason, smuggling, conspiracy, night poaching.

The following persons are liable to arrest without warrant :— Deserters, unlicensed pedlars, suspected persons found "loitering" at night in yard or highway (*g*), offenders against Vagrancy Acts (*h*), and persons committing breaches of the peace.

Also persons obstructing police in execution of duty.

Arrest with Warrant.

A warrant is an order in writing signed by a magistrate, authorising the person to whom it is addressed to do a certain act. The doing of this act is called the execution of the warrant.

Warrants may be thus classified : warrant to arrest, warrant to commit, warrant to commit in default, search warrants, distress warrants.

As to power of justices to issue warrants, see "Justices," pp. 33—35, 41, *ante*. As to issue of summons and subsequent issue of warrant, see pp. 35, 104. As to issue of warrant "in first instance," see p. 12.

As a constable acting under the authority of a warrant (*i*) is in a better position to follow and arrest an offender than a constable acting without warrant—by virtue of his office only—it is always advisable, where time admits, to procure a warrant for the arrest of offenders. In arresting with a warrant, the party arrested may be shown the warrant if he desires it, for by so doing any question as to the legality of the arrest will be prevented.

(*g*) See "Criminal Law Consolidation Acts" (Appendix), *post*.
(*h*) See title "Vagrants" (General Subjects), *post*.
(*i*) The warrant must be in the personal possession of the constable in all cases of misdemeanor or less than felony (*Codd* v. *Cabe* (1876), 45 L. T. 101 ; 45 J. P. 566 ; Stone's Justices' Manual, 37th edit., pp. 5, 38, 123, 134, 313, 1070, 1073), otherwise if the person resist the constable, he cannot be convicted of assault, nor can he be so convicted for resisting the execution of an "unbacked" warrant (*R.* v. *Cumpton* (1880), 44 J. P. 489).

If the warrant is directed to the constable he cannot authorise others to execute it, but others may lawfully assist him to do so, and in that case he should be near at hand and acting in the arrest in order to render it legal.

The constable *should not part with the warrant* under any circumstances prior to its execution, but after execution he should hand it to his superior officer that it may be carefully filed at the station and preserved for the constable's future protection.

A warrant continues in force until it is fully executed and obeyed.

The dates of receipt and execution of all warrants and by whom executed must be punctually endorsed thereon.

In proceeding to execute warrants and other police duty, constables should act with the utmost discretion and silence, communicating with no one, except members of the force, concerning their movements or the nature of the service on which they are engaged.

Retaking.—It has been held that if a constable after he has arrested the party lets him go at large on his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant, but if a party arrested do escape, the constable on fresh pursuit may take him again and again so often as he escapes. See p. 111, *post.*

Fresh pursuit.—In cases of fresh pursuit when the offender escapes out of the jurisdiction of the justice into an adjoining county or place, the constable or person having the warrant, if in actual pursuit, may follow the offender to the distance of seven miles from the border or confines of the jurisdiction.

"Backing" warrants.—Except in cases of fresh pursuit, a warrant cannot be executed beyond the jurisdiction of the justices issuing it, unless it be "backed," viz., endorsed by a justice of the county in which it is to be carried into execution. The justice backing the warrant must be satisfied that it is a lawful warrant. A "declaration" made by the constable holding the warrant that the signature of the warrant is in the handwriting of the magistrate by whom it purports to be signed is sufficient proof that it is a lawful warrant. See Indictable Offences Act, 1848, and Summary Jurisdiction Act, 1879, s. 41, p. 43, *ante.*

Reciprocal powers.—By 19 & 20 Vict. c. 69, s. 6, constables of every county have in all boroughs situated (wholly or in part) within such county the same powers and privileges as constables appointed for such boroughs have within any such county. These privileges are defined in s. 191 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

Section 223 of that Act provides for the execution in a county in which any borough is situated (or within seven miles of borough) of a search warrant, or a warrant for the apprehension of any person charged with an offence, issued by a justice of the peace for such borough without the same being "backed" by a justice of the county. Similar warrants, therefore, issued by a justice of any county within which a borough is situated (wholly or in part) do not necessarily require "backing" for execution within such borough. Warrants of commitment and other warrants issued by a county justice should be "backed" before being executed in such boroughs where such boroughs have a separate police jurisdiction. See *R.* v. *Cumpton* (1880), 44 J. P. 489.

As to Warrant of Commitment, see p. 36, *ante*.

As to Warrant of Distress, see p. 36.

Search Warrant.

By the Larceny Act, 1861, s. 103, it is enacted that if any credible witness shall prove upon oath before a justice that he has "*reasonable cause*" (*k*) to suspect that any person has in his possession or on his premises any property whatever on or with respect to which any offence punishable either upon indictment or upon summary conviction by virtue of that Act (Larceny Act) shall have been committed, the justice *may grant a warrant* to search for such property as in the case of stolen goods.

The search should be made in the daytime if there be probable suspicion only, but where there is positive proof the warrant may be executed in the night time. A search warrant may be granted on *Sunday* (Indictable Offences Act, 1848, s. 4), *and may, it is conceived, be executed on Sunday.*

(*k*) See *Wyatt and White*, 24 J. P. 197, 242; Stone's Justices' Manual, 37th edit., p. 1073.

When a search warrant is given to a constable to carry into execution he should demand admittance to the premises, and if refused he may break open the doors. After having obtained entrance a constable may break open inner doors which obstruct him.

A warrant directing a search in a particular house only will not justify a search in another. In case a further search is necessary another warrant should be obtained, a watch being meantime kept upon the suspected house. It is doubtful whether a constable will be justified in searching for stolen goods in a house without a warrant, *even with the consent of the occupier* (23 J. P. 94).

A search warrant is required for the constable's protection in case nothing is found, but in the event of a serious felony having been committed and the stolen property traced into a house and its being there as certain as if it were seen, a constable would run no risk of an action if he entered and seized both the property and the suspected thief. But the greatest caution is necessary.

The constable must strictly observe the directions of the warrant, and if he be directed to seize only stolen sugar and seize tea, he will be a trespasser (*Price* v. *Messenger*, 2 B. & P. 158, and *Bell* v. *Oakley*, M. & S. 261). But it has been held in a later case (*l*) that the particular goods to be searched for *need not be specified in the warrant*, and nothing is more common than on searching the house of some notorious thief to find other stolen articles than those searched for, and it is an every-day practice for constables to secure such as well as the person suspected, and thereby bring him to justice. But as the constable has no warrant to fall back upon in such a case, he should be *most certain* that the article so found has really been stolen, and that the proof of such

(*l*) *Jones* v. *German* (1897), 61 J. P. 180, to effect that it is not necessary to state in the warrant that a felony has been committed nor to specify the goods to be searched for. An action will not lie against a person for inducing a magistrate to issue a search warrant if the applicant is acting *bonâ fide*, and therefore without malice, and fairly and fully states his grounds of suspicion to the magistrate, and the magistrate comes to the conclusion that there are reasonable grounds for issuing the warrant (*Hope* v. *Evered*, 17 Q. B. D. 338; 55 L. J. 146).

felony is at hand before he takes either the goods or the person into custody (*m*).

The constable must have the warrant in his personal possession at the time of the search, and produce it if required. See *Codd* v. *Cube*, 45 L. J. 101 ; 40 J. P. 506. The only persons legally authorised to execute a warrant are the persons to whom it is directed : the authority cannot be delegated. See *Symonds* v. *Kurtz*, 33 Sol. J. 491 ; 53 J. P. 727.

Distress Warrant.

A warrant of distress is issued after the defendant has been tried by the magistrates, and been ordered to pay a fine, or in default of payment to have his goods seized and sold (*n*).

An officer or constable legally authorised to distrain can enter on the premises for the purpose of making a seizure of the distress. In executing these warrants there is *no power to break open doors* or gates in case they are locked up or shut, and the constable is to show his warrant on request to the person whose goods are distrained, and suffer a copy of it to be taken, but in no case to part with his warrant.

When the distress is levied on household goods the goods shall not be removed from the house until the day of sale, except with the consent in writing of the person against whom the distress is levied, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark. Any person removing the goods so marked or removing the mark therefrom is liable to a penalty. The wearing apparel and bedding of a person and his family and the tools and implements of his trade to the value of £5 shall not be taken under a distress issued by a court of summary jurisdiction.

(*m*) In *Crozier* v. *Cundy*, 6 B. & C. 232, a constable was held to be a trespasser for having seized articles not mentioned in the warrant, and which were not likely to be of use in substantiating the charge of stealing the goods that were so specified.

(*n*) As to issue, execution, etc., of such warrant, see p. 41, *ante*.

If no sufficient distress is found the constable is not to seize or impound *less*, but report to the magistrate that there is no sufficient distress, and he will then commit the defaulter to prison.

SUMMONSES.

The procedure as to issue and service of summonses is laid down in the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43). See p. 34, *ante*.

A summons is an order signed by a magistrate. It is issued in duplicate, one portion, that signed by the justice, being called "the original," the other "the copy."

A police officer on receiving a summons to serve will carefully compare the original with the copy, so as to be able to swear it was a "true copy" he received. He will serve the copy and keep the original, on which he will endorse the date and manner of service.

Service.—The summons should (unless it contain instructions to the contrary) be served *personally* on the party to whom it is directed as soon as possible, but so (if it be practicable) that three clear days (*o*) may elapse between the service and the date of hearing. If the service of the summons personally cannot be accomplished, it will in most cases be sufficient to leave the copy at the usual place of abode of the person to whom it is addressed. In such case the summons must be left with some inmate of the house over the age of sixteen years. The nature of the summons should be explained to such person, and the constable or officer (*p*) should make a note of the name of such person, and the degree of relationship (if any) to the person summoned.

(*o*) Bastardy summons must be served *six clear days* before the hearing.

The summons is not valid if served after the soldier is under order for service beyond the seas.

Summonses under the Employers and Workmen's Act, 1875, have to be served *four* clear days before the hearing.

(*p*) By decision in *Re William Smith*, justices have no jurisdiction to convict *ex parte* in absence of defendant, unless satisfied that the summons has been brought to his notice (L. R. 10 Q. B. 608; 39 J. P. 292, 322).

In no case can a summons be served by the complainant himself.

Appearance to a summons "waives" any irregularity of service.

"Witness" summons.—The attendance of witnesses is obtained by a witness summons which must be personally served or brought to the knowledge of the witness. A witness refusing to give evidence may be committed for contempt (*q*).

Endorsement.—After service the officer or constable should endorse, viz., write upon the back of the original summons in his possession, the day of the month the service took place, whether it was personal or by leaving it at place of abode, and, if so, with whom and where.

Proof.—The officer or constable will attend the hearing of the case at petty sessions to prove the service if necessary. Section 41 of the Summary Jurisdiction Act, 1879, provides for proof of service by declaration. If a person fails to appear in answer to a summons, a warrant may be issued to compel his appearance. As to issue and execution of warrants, see p. 99, *ante*.

Where several summonses have to be served in a petty sessional division, it is desirable, if possible, to employ one constable to serve them, and thus avoid the attendance of several constables at one petty sessions.

Service of "orders."—An order is served *personally* and proved similarly to a summons; a copy is delivered to the party concerned and the *original order* is kept.

Police as Witnesses.

Police, when under examination, should answer all questions put to them briefly, in a distinct tone of voice, taking care to depose *to those facts only* of which they have a *personal knowledge*.

They should never hesitate to answer questions which may be favourable to the prisoner. The question of conviction or acquittal should in no wise influence the constable. Constables are often

(*q*) "*Contempt of Court*."—Except as above stated justices have no power to commit for "contempt of court," but any one who offends can be removed from the court.

subjected to severe cross-examination by counsel for the defence, who sometimes comment unfavourably on the constable's conduct in the case, or infer that the statements made are untrue. Constables should in such cases keep their tempers and answer respectfully and quietly, keeping nothing back even though it be unfavourable to them. If a constable has spoken the truth and the *whole* truth, he has no need to feel nervous under cross-examination.

A witness can refresh his memory by reference to any entry or memorandum *made by himself at the time* or shortly after the occasion of which he is speaking. Should the memorandum have to be referred to *in the witness box* the notes may have to be handed in.

When prisoners have made confessions or statements, the *exact words* used by them should be given in evidence, and in the *first* person. Disgusting and filthy language should not be repeated unless the witness is specially called upon to state the exact words made use of. Conversation and remarks which were not made *in the presence* of the prisoner cannot be given in evidence.

A constable when giving evidence should stand in an upright position, maintaining a quiet and grave demeanor, and not give way to unseemly mirth, however ludicrous the subject.

The general rules of evidence are, that the best evidence the nature of the case will admit of shall be produced; that hearsay evidence in general is inadmissible; that conversations and remarks not made in presence and hearing of accused cannot be given. As to expert evidence, circumstantial evidence, evidence as to character, handwriting, etc., see under title, "EVIDENCE," pp. 20—24, *ante*. As to legal principles and terms, see p. 14, *ante*. As to confessions, dying declarations, etc., see p. 113, *post*. The Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), amends the law of evidence in an important particular as regards prisoners, the evidence on oath of accused persons being receivable. See title, "CRIMINAL EVIDENCE ACT," GENERAL SUBJECTS, *post*.

Police informants.—It was laid down by COCKBURN, L.C.J., on trial of an indictment, that a police constable is bound on cross-examination to give the name of his informant (*R.* v. *Richardson* (1863), 3 F. & F. 693; 36 J. P. 238). But in ordinary

cases it is for the judge to decide whether any such question would or would not be injurious to the administration of justice (Stephen's Digest, 116). See also the case of *Webb* v. *Catchlove* (1886), 50 J. P. 795. The Court of Appeal has held in *Marks* v. *Beyfus* (1890), 38 W. R. 705, that the Director of Public Prosecutions was not required to state the name of his informant. See also Justices, p. 29, *ante* ("From Information Received").

Police as Advocates.

In summary cases the complainant or informant is at liberty to conduct his case by virtue of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 42), s. 12. But in indictable cases there is no such power given by statute, and it was expressly ruled in *R.* v. *Brice* (1819), 2 B. & A. 606, that a prosecutor had no right to address the jury. Cockburn, L.C.J. refused (in case of Overend, Gurney & Co.) to allow prosecutor, who had instituted proceedings in name of Crown in usual way, to conduct prosecution without counsel, and adjourned for counsel to be instructed (11 Cox C.C. 422).

Denman, J., at Warwick, 1874, and Hawkins, J., at Worcester, 1885, expressed themselves in emphatic language that the practice of police acting as advocates was likely to impede, and in some cases entirely frustrate the proper administration of the criminal law.

The Queen's Bench Division quashed a conviction where a superintendent of police had acted as advocate, and had directed a police officer to refuse to disclose upon cross-examination the name of the person on whose premises he was secreted whilst watching licensed premises. The court held that it was a very bad practice to allow a policeman to act so that he would have to bring forward in a court of justice only such evidence as he might think fit and keep back any that he might consider likely to tell in favour of the prisoner (*Webb* v. *Catchlove* (1886), 50 J. P. 795; 82 L. T. 103). In a later case the court agreed with what was said in *Webb* v. *Catchlove*, but held that an informant or complainant in summary cases is entitled to open his case and address the court, examine his witnesses and cross-examine those called for

the defence, whether he be a private complainant or public officer (*Duncan* v. *Toms* (1887), 35 W. R. 667 ; 56 L. T. 719 ; Stone's Justices' Manual, 37th edit., pp. 46, 242, 1022).

The justices of Worcester endeavoured to elicit from the Home Office a definite opinion for their guidance. The reply of the Home Secretary was to the effect that, in his opinion, an ordinary informant or complainant in summary cases is entitled to open his case and address the court, also to examine and re-examine his own witnesses, and to cross-examine witnesses called for the defence—a right which is not affected by his giving evidence as a witness ; and that there appeared to be no distinction between an information laid by a private informant or complainant and an information laid by a chief or other constable in matters appertaining to him in his official capacity rather than in his individual or private capacity. The Home Secretary was, however, emphatic on one point, that the right *does not extend* to informations relating to indictable offences.

CHAPTER V.

PRISONERS—PROSECUTIONS—EXPENSES.

PRISONERS.

Persons arrested by the police should be at once taken to the lock-up of the station or district. Having effected an arrest, the constable has no power—except in certain cases where bail is to be taken—to deal with a prisoner otherwise than by taking him before a magistrate as soon as he reasonably can. He has no personal power of discharging a prisoner, except in the case of wrongful custody of an entirely innocent person, when further detention would be illegal. If a rescue be attempted, or if the party arrested be sick, the constable may keep him for a time in a house or other place of security. As to re-arrest of a prisoner who has escaped, see p. 100, *ante*, and p. 111, *post*.

Prisoners are to be treated by the constabulary with the humane consideration which their situation and safety will admit of, and no harshness or unnecessary restraint is to be used towards them. Officers in charge of stations should carefully examine each prisoner whom they receive before locking him up. Medical aid is to be promptly afforded to any prisoner requiring it. Cases have occurred where persons who have been arrested for drunkenness and confined in police cells have been found to be really suffering from illness or want of nourishment.

The constabulary are responsible that prisoners are supplied with proper and sufficient food while in custody. They should on no account be allowed to have beer, spirits, or intoxicating liquors, without the order of a medical man.

Where a prisoner is committed under "warrant of committal," he should be conveyed to prison with all possible dispatch, as the period of imprisonment counts from the date he is received at the prison.

Bail.—The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 38, requires that a superintendent, inspector, or other

officer of police *shall*, in certain cases, except where the offence appears to be of a serious nature, discharge the prisoner upon bail. See title "BAIL" (GENERAL SUBJECTS), *post*. In cases of felony where further evidence is required, the prisoner can be remanded by the magistrate for a period not exceeding eight days.

Searching.—The right of searching persons in custody must depend on the circumstances of each particular case, and the mere fact of a person being drunk and disorderly will not justify a police officer searching his person, although the officer may have received general orders to search all persons in custody: but any person, whatever may be the nature of the charge, may so conduct himself by reason of violence of language or conduct that it may be prudent and right to search him, as well for his own protection as for those entrusted with the duty.

Lord CAMPBELL held (in the case *Bessell* v. *Wilson* (1853), 20 L. T. 238) that it would be the duty of a magistrate to direct a search in case of a person arrested for felony, in order to ascertain if there were any instruments in his possession with which he might have been engaged in the violation of the law. It might be often highly salutary that persons so apprehended should be searched.

When prisoners are searched the search should, if possible, be made in the presence of a witness. Female prisoners should be searched by some respectable woman, and when practicable in the presence of a second female.

A list should be kept and proper entry made in official books of property found on prisoners, and a receipt should be taken for same when returned or when handed over to prison authorities.

As to restitution of property, see "RESTITUTION," GENERAL SUBJECTS, *post*.

As to identification of persons and stolen property, see Chap. II., p. 74, *ante*.

Identification.—In the identification of individuals, the person to be identified should be placed amongst others of his own height and appearance, and of his own position in life (*a*).

(*a*) *The Beck Inquiry*.—The unreliability of evidence of identity based on personal impressions was illustrated and commented upon in the course

Handcuffs.—A constable should always be able to show "good special reasons" (*b*) for handcuffing *unconvicted* persons. Cases have occurred where actions have been maintained against the police for handcuffing persons in custody, arrested on suspicion, who were subsequently acquitted of the charge preferred against them. Where the prisoner is a man of notoriously bad character, or violent, or dangerous, or where he threatens or assaults the constable or attempts to escape, or where the constable, having two or more prisoners in charge, is unable otherwise to secure their safety, or in cases where the offence is of a very serious nature, the constable would be justified in handcuffing a prisoner. In the absence of such reasonable grounds, prisoners charged with drunkenness and such trivial crimes should not be handcuffed. As, however, the escape of a prisoner may demand the dismissal of the officer, it behoves the police to be vigilant in discharge of their duty when on escort. Females or old and infirm persons should not be handcuffed. Prisoners should be handcuffed with the arms across the front of the body, and not with the hands palm to palm.

Escape of prisoner.—Police officers and others negligently permitting the escape of a prisoner in custody for a criminal matter are guilty of misdemeanor, but voluntarily permitting an escape amounts to the same kind of offence, and is punishable in the same degree as that of which the prisoner is guilty, and for which he is in custody, whether treason, felony or misdemeanor (1 & 2 Geo. 4, c. 88 ; 4 & 5 Will. 4, c. 67).

Prison breach is an escape by a prisoner lawfully in prison. If the person be in custody on a charge of treason or felony the offence is felony : where he is in custody on a minor charge, the

of the inquiry by the Committee appointed in 1904, to investigate the circumstances connected with the conviction (for frauds on women) of Adolph Beck, who was mistaken for one John Smith, and who, though eventually released, underwent a term of imprisonment as a convict. The Committee's report exonerated the police from some vague charges suggested or asserted against them, and the report further stated that the process of identification was fairly conducted. See 68 J. P. 589, and 69 J. P. 30 (correspondence).

(*b*) In *Norman* v. *Smith*, Manchester Assizes, February, 1880, damages (£15) were recovered for handcuffing a prisoner in custody under a warrant for perjury. See also *Wright* v. *Court* (1825), 4 B. & C. 596.

offence is a misdemeanor. An actual breaking of the prison with force, and not merely a constructive breaking, must be proved. No breach of prison will amount to felony except the prisoner actually escape.

Rescue.—The statutes 25 Geo. 2, c. 37, s. 9; 1 & 2 Geo. 4, c. 88; 7 Will. 4 & 1 Vict. c. 91, deal with the offence of rescue.

Expenses of prisoners.—The liability to pay expenses of conveyance, etc., of prisoners *after commitment* is by the Prisons Act, 1877 (40 & 41 Vict. c. 21), transferred to the Secretary of State. If the prisoner is in possession of sufficient money to pay expenses, the committing justice may order it to be so applied (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 26).

QUESTIONING, CAUTIONING, ETC.

When a constable suspects a person of committing an offence, it may be necessary for him to put certain questions to ascertain whether he will be justified in apprehending him, *but the moment he is so satisfied* he has no right to *further question* the suspected person.

Questions.—In cases of arrest by warrant, or when a constable is about to arrest a person or has a prisoner in custody, he has no right to question such person touching the crime of which he is accused. The following is the effect of observations on the subject made by the late Lord Chief Justice COCKBURN at the Central Criminal Court, July 16th, 1870: "You may ask a man questions with an honest intention to elicit the truth and to ascertain whether there are grounds for apprehending him, *but with a foregone intention of arresting him* to ask questions for the main purpose of *getting anything out of him* that may be afterwards used against him is a very improper proceeding."

Cautioning.—Various opinions exist as to whether it is incumbent on a constable to "caution" a person in custody on a criminal charge against saying anything that may criminate him, by informing him that it will be given in evidence against him. Judicial opinions have been given both in favour of and against such a practice.

A recent letter of the Home Secretary, in reply to one from a chief officer in Wales asking for information on the subject, is pertinent to the matter and herewith inserted :

A52. 392/9. Whitehall,
Sir, 18th May, 1904.

In reply to your letter of the 9th instant on the question whether or no a police constable should caution a prisoner at the time of arrest, I am directed by the Secretary of State to say that in view of the fact that judicial opinion on the subject has not been unanimous he does not think that constables ought to be instructed *never* to caution prisoners. He agrees with you, however, in thinking that the effect of a caution may frequently be to prevent the prisoner from making a voluntary statement which might have been of great value, and he considers that you may properly direct the constables of your force in all ordinary cases to listen to any statement which the prisoner may make of his own free will at the time of arrest without administering a caution.

I am to add that the *questioning* of prisoners by constables is quite a different matter to be carefully distinguished from the subject of the present letter.

I am, Sir, your obedient Servant,
W. D. CHALMERS.

Any *voluntary* statement a prisoner may wish to make should be carefully listened to and written down as soon as possible. In such cases it is desirable to "caution" the prisoner.

Confessions.—Constables must carefully avoid holding out to any prisoner any promise, or endeavouring by threat or any other means to extract from them any *confession.*

In the Yeovil murder case (Somerset Spring Assizes, 1877), a superintendent of police stated he had a conversation with the prisoner, and asked him if he could account for himself on the Thursday night. The Lord Chief Justice is reported to have told the superintendent "the law did not allow a man under suspicion and about to be apprehended to be interrogated at all ; a judge, magistrate, or jury could not do it, and it was a very great mistake to do so in this instance" (41 J. P. 187).

Dying declarations are constantly admitted in evidence. They may be taken by any person ; but where time permits they should be taken before a magistrate. They need not be in writing, but if possible should be. There is no particular form of declaration ;

they do not require to be sworn to, the awful situation of the dying person being considered equal to the sanctity of an oath. It is essential that the declarant should be in actual fear of death—that he should fully appreciate his danger and have no expectation of recovery. See also "JUSTICES," p. 26, *ante*.

PROSECUTIONS.

Persons charged with the commission of crimes or offences are either dealt with summarily before justices acting in or out of petty sessions, or are, if charged with certain indictable offences, committed for trial on indictment at quarter sessions or assizes after preliminary inquiry held before the magistrates.

The Indictable Offences Act, 1848, and the Summary Jurisdiction Acts set forth the procedure to be adopted. The Summary Jurisdiction Act of 1879 greatly enlarged and extended the powers of justices, and enabled courts of summary jurisdiction to deal summarily with many cases of felony formerly triable only on indictment. For analysis of Act, see p. 37, *ante*.

Two justices in petty sessions or one stipendiary magistrate constitutes a court of summary jurisdiction.

The following sections of the Acts referred to are specially important:

INDICTABLE OFFENCES ACT, 1848.

(11 & 12 Vict. c. 42.) (*c*).

Ss. 1—10. As to issue of warrants and Summonses.
S. 11. "Backing" warrants.
Ss. 16—18. Witnesses.
S. 21. Remand.
S. 23. Bail.
S. 26. Commitment.

(*c*) For an analysis of Act, see p. 33, *ante*.

SUMMARY JURISDICTION ACTS OF 1848 AND 1879 (*d*).

Summary Jurisdiction Act, 1848 (11 & 12 *Vict. c.* 42).

S. 1. Issue and service of summonses.
Ss. 2, 3. Warrants.
S. 7. Summoning of witnesses.
S. 10. Information.
S. 12. Hearing of complaint or information.
S. 19. Distress warrant.
S. 23. Commitment.
Ss. 28—31. Penalties.

Summary Jurisdiction Act, 1879 (42 & 43 *Vict. c.* 49).

The following sections of this Act are in this connection specially important :

Power is given under s. 4 to "mitigate punishments," imposing fines in lieu of imprisonment in certain cases.

Section 5 prescribes scale of punishments.

Fees "remitted."—Justices may allow fines inflicted to be paid by instalments, and costs may be "remitted" where the fine does not exceed 5*s*. *Where this is desired, police should request the court at time of hearing to remit fees* (s. 7).

Sections 10 and 11 contain special provisions regarding the trial and punishment of children, and of young persons for indictable offences.

Whipping.—Males under fourteen may in addition to or in lieu of other punishment be ordered to be whipped with a birch rod by a constable *in the presence of an inspector* or officer of police of higher rank than a constable, and, if desired, in the presence of parent or guardian.

Under ss. 12 and 13 justices can deal "summarily" *with adults* charged with *indictable offences.*

Previous conviction.—Where an adult is charged with any indictable offence specified in First Schedule to Act, and it appears to the court that the offence is one which (owing to a previous conviction *on indictment*) is punishable with penal servitude, the court shall not deal with the case summarily (s. 14).

(*d*) For analysis of statutes, see pp. 34—46, *ante.*

Under s. 16 the court can, where the offence is of a trifling nature, discharge the accused with a nominal punishment, or on taking sureties.

S. 20 requires that all cases *shall be heard in open court*, viz., a petty sessional court-house or an "occasional court-house."

S. 21 deals with warrants of commitment and distress.

S. 37. A warrant does not become void by reason of death of justice who has signed same.

Bail.—S. 38 enacts that a person taken into custody for an offence without a warrant shall be brought before a court of summary jurisdiction as soon as practicable, and if such a court will not be practicable within twenty-four hours after he is taken into custody, *a superintendent or inspector of police or other officer of police* of equal or superior rank or in charge of any police station shall inquire into the case, and, except when the offence appears to be of a *serious character*, shall discharge the prisoner upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before the court when required.

For provisions of Summary Jurisdiction Acts, 1881, 1884, and 1899, see p. 46, *ante*.

THE PROSECUTION OF OFFENCES ACT, 1884.

(*Public Prosecutor.*)

This Act (47 & 48 Vict. c. 58) amends 42 & 43 Vict. c. 22, which provided for the appointment of a public prosecutor. The Act provides that the person for the time holding the office of solicitor to her Majesty's Treasury shall be "director of public prosecutions."

The chief officer of every police district in England shall from time to time give information to the director as to the indictable offences committed within his district as required by the principal Act.

REWARDS (*e*), RESTITUTION, ETC.

As to corruptly taking rewards, advertising rewards, etc., see Larceny Act, 1861 (ss. 101 and 102), Appendix, *post*.

As to restitution of property, see title "RESTITUTION," GENERAL SUBJECTS, *post*.

EXPENSES.

By 7 Geo. 4, c. 64, s. 22, the expenses attending the Prosecution of Felonies are borne by the Public. The committing justice signs a certificate allowing a reasonable sum to the prosecutor, witnesses, and police for loss of time, etc. In Treasury prosecutions the costs are regulated by orders made by the Secretary of State (Treasury Minute, June 29th, 1875).

Under 33 & 34 Vict. c. 23, s. 3, the court may condemn a person convicted of treason or felony to pay the costs of the prosecution out of any moneys taken from him on his apprehension.

By the Summary Jurisdiction Act, 1879, provision is made for payment of costs of indictable offences dealt with summarily.

Provision is made by s. 23 of 7 Geo. 4, c. 64, for the payment of costs in cases of misdemeanor.

Provision is also made under the Criminal Law Consolidation Acts for payments of costs of prosecution.

The court of assize or session may order a sum of money (not exceeding £5 in case of the quarter sessions) to be paid to any person who may have been active in the apprehension of offenders charged with serious offences, such as murder, robbery, etc.

Under 29 & 30 Vict. c. 52, expenses incurred in the prosecution of cases of felony and certain misdemeanors, upon charges *bonâ fide* made upon reasonable and probable cause, may be allowed by justices, even though the cases are not committed for trial.

(*e*) As to claim of police to reward offered for "such information as will lead to the apprehension" of the felon where the felon surrenders himself, see 43 J. P. 55.

FEES.

The expenses of prosecutors and witnesses are regulated by a table of fees arranged by Secretary of State, and adjusted quinquennially on recommendation of justices, in accordance with the provisions of various circulars relating thereto.

PROSECUTORS AND WITNESSES.

No. 113,989. June 14th, 1904.

Regulations made by the Secretary of State under 14 & 15 Vict. c. 55, governing the allowances payable to prosecutors and witnesses in criminal prosecutions (*f*):

1. WITNESSES GIVING PROFESSIONAL EVIDENCE (*g*).

To practising members of the legal and medical professions—

For attending to give evidence in the town or place where the witness resides or practises—

if the witness attends in one case only, one guinea per diem;

if the witness gives evidence on the same day in two or more cases, two guineas;

For attending to give evidence elsewhere, not more than two guineas per diem.

"Place" means the area within a radius of three miles from the court.

In exceptional cases where the solicitor for the prosecution gives professional evidence, a fee of 6*s.* 8*d.* may be allowed.

(*f*) The Regulations are based on the Report made to the Secretary of State by a Committee specially appointed, of which the Right Hon. Sir John Dorington, Bart., M.P., was chairman. See Parliamentary Paper, 1903, Cd. 1650.

It has been found possible, in accordance with the recommendations of the Committee, to increase considerably the scale of allowances to be paid to prosecutors and witnesses without departing from the principle that *it is a primary duty incumbent on every citizen to assist the course of criminal justice.*

(*g*) It is necessary to bear in mind that the sums fixed by this Regulation are maximum rates, and in each case discretion must be used as to the circumstances in which the maximum may properly be allowed, such as, *e.g.*, whether the witness is detained all night or is losing private practice.

2. EXPERT WITNESSES AND INTERPRETERS (*h*).

There may be allowed to expert witnesses and interpreters such allowances for attending to give expert evidence as the court may consider reasonable, including, where necessary, an allowance for qualifying to give evidence.

3. POLICE OFFICERS (*i*).

When attending as prosecutors or witnesses at courts situate outside the area of their own police authority—

(a) In the case of constables and sergeants, a sum not exceeding 4*s.* per day and 4*s.* per night.

(b) In the case of inspectors, 5*s.* per day and 5*s.* per night. Superintendents and chief officers, 7*s.* per day and 5*s.* per night.

4. PRISON WARDERS.

There may be allowed to prison warders attending as prosecutors or witnesses or in charge of a prisoner produced to give evidence, a sum equal to that allowed them by the regulations of the Prison Department (4*s.* to 8*s.*).

5. ORDINARY WITNESSES.

There may be allowed to witnesses, other than those hereinbefore mentioned, allowances not exceeding 7*s.* for the day and 5*s.* for the night:

PROVIDED that the day allowance to the under-mentioned classes of witnesses, *when they are not necessarily detained from home for a night*, shall not, except for special reasons allowed by the court, exceed the following rates:

(1) For children the allowance shall not exceed 1*s.* per diem;

(2) For persons of the pauper or vagrant class, 1*s.* per diem;

(3) For other persons *who do not lose wages, earnings, or income by attendance*, the allowance shall not exceed 2*s.* 6*d.* per diem;

(*h*) No definition of "expert" witness has been inserted, the term being well known to the courts of law. As heretofore, the allowance covers not only the attendance to give evidence in court, but also, where necessary, the time spent in "qualifying" to give evidence.

Under 7 Geo. 4, c. 64, s. 22, the court may allow reasonable fees for analyses, microscopical examinations, plans, etc., which are necessary for the prosecution, and are made under proper authority.

(*i*) The sums to be allowed under Regulations 3 and 4 may be regarded as fixed, unless there are very special reasons for making the allowance to an individual officer less than the sums specified.

Special allowances to police for proving previous convictions are abolished.

(2) For persons in the employ of an employer who not [illegible] the allowance shall not exceed the following rates, except on the production of a certificate from the employer showing that the wages so lost are in excess of such rates:

	s.	d.	
For agricultural and unskilled labourers ...	5	6	per diem
For artisans and mechanics	5	0	"
For clerks and shop assistants	5	0	"

PROVIDED also that [illegible] limit of 5s. shall exceed the expense [illegible] the witness.

6. SEAMEN.

Where seamen have been detained on shore for the purpose of giving evidence in a criminal prosecution the person actually and reasonably [illegible] in addition to any allowance made under the foregoing rule.

7. GENERAL REGULATION.

No full day allowance under Regulation 1, 2, or 3 shall be paid unless the witness is necessarily detained away from his home or place of business or employment for at least nine hours for the purpose of giving evidence.

If the time during which the witness is necessarily detained away from his home or place of business or employment be less than nine hours, he shall receive half the full day allowance or so much thereof as he would have received had he been detained for the full day:

Provided that this Regulation shall not apply (1) where the full day allowance is not more than 5s., and (2) where the court is satisfied that a witness, though absent for less than four hours, necessarily loses in consequence of his attendance, his whole day's wages.

No night allowance under Regulations 1, 2, and 3 shall be paid unless the witness is under no [illegible] to give evidence is necessarily detained away from home for the night.

There may be allowed to any prosecutor or other person who in the opinion of the court necessarily attends for the purpose of the prosecution otherwise than as a witness, the same allowance, including travelling allowance as to an ordinary witness.

No distinction is made between attendance at petty sessions and attendance at quarter sessions and assizes.

8. TRAVELLING ALLOWANCES (k).

For attending court from a distance of over two miles there may be allowed—

(1) To witnesses travelling by railway or other public conveyance, the fare actually paid. Railway fares, except for special reasons

(k) The question whether a railway fare in excess of third class is to be allowed in any case will mainly depend on what may be reasonably supposed to be the witness's ordinary habit and practice.

allowed by the court, shall be third class. In the case of police witnesses, the reduced rates under the Cheap Trains Act, 1883, shall not be exceeded, unless there are special reasons.

(2) Where no railway or other public conveyance is available, and witnesses necessarily travel by a hired vehicle, the sum actually paid not exceeding 1*s.* a mile each way : provided that, where two or more witnesses attend from the same place, the total allowance shall not exceed 1*s.* a mile.

(3) To each witness travelling on foot or by a private conveyance, where no railway or other public conveyance is available, a sum not to exceed 2*d.* a mile each way.

Allowances made under (2) and (3) shall be made separately as mileage.

For the conveyance of witnesses suffering from serious illness, or for the carriage of heavy exhibits, sums in excess of the above rates may be allowed if the court is satisfied that the expense incurred was reasonably necessary.

9. FORM OF CERTIFICATE.

A special form of certificate is provided to be used when a magistrate, acting under the Indictable Offences Act, 1848, grants a certificate of the allowances payable to prosecutors, witnesses, and other persons appearing before them.

CHAPTER VI.

SPECIAL AND OTHER CONSTABLES.

(Regarding County and Borough Constables and "Towns Police," see Chap. VII., *post.*)

The Acts regulating the appointment of special constables are 1 & 2 Will. 4, c. 41, and 5 & 6 Will. 4, c. 43. The appointment of constables on public works and on canals and navigable rivers is regulated by 1 & 2 Vict. c. 80, and 3 & 4 Vict. c. 50. The principal provisions of these Acts are here given, as also the provisions of the Parish Constables Acts, 1842 and 1872 (*a*), and the Act relating to "high constables."

Additional Constables.

"Additional" constables (*b*) are appointed by the chief constable (subject to approval) under the Police Act, 1840 (3 & 4 Vict. c. 88), s. 19, at the cost of the person or persons applying for them. Their services can be discontinued at one calendar month's notice.

Special Constables in Counties (*c*).

The Act 1 & 2 Will. 4, c. 41, empowers justices to appoint special constables in cases of riot, etc., and this power of appointment is enlarged by 5 & 6 Will. 4, c. 43.

By 1 & 2 Vict. c. 80, the expenses of special constables appointed near public works may have to be defrayed by the contractor or company carrying on the works.

(*a*) The appointment of parish constables is now restricted to certain parishes.

(*b*) These constables form part of the recognised police force, but are appointed on the application and at the cost of private individuals and for prescribed areas.

(*c*) As to special constables *in boroughs*, see pp. 126, 140, *post.*

Voters.—17 & 18 Vict. c. 102, s. 8, provides that voters shall not be required to serve as special constables at parliamentary elections unless they consent to do so.

Expenses.—41 Geo. 3, c. 78, enacts that when special constables shall be appointed in England to execute warrants in cases of felony, two justices may order proper allowances to be made for their expenses and loss of time, which order shall be submitted to quarter sessions.

Special Constables Act, 1831

(1 & 2 Will. 4, c. 41).

S. 1.—**Two or more justices, upon information on oath that disturbances exist or are apprehended, may appoint special constables.**—"In all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony has taken place or may be reasonably apprehended in any parish, township, or place situate within the division or limits for which the said respective justices, usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property in any such parish, township, or place as aforesaid, then and in every such case such justices, or any two or more justices acting for the same division or limits, are hereby authorised to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable) residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices respectively shall seem fit and necessary, for the preservation of the public peace, and for the protection of the inhabitants and the security of the property in such parish, township, or place; and the justices of the peace who shall appoint any special constables by virtue of this Act, or any one of them, or any other justice of the peace acting for the

same division or limits, are and is hereby authorised to administer to every person so appointed the following oath" (*d*):

Form of Oath to be taken by Special Constables (*e*).

"I *A. B.* do swear, that I will well and truly serve our Sovereign Lord the King in the office of special constable for the parish [or township] of , without favour or affection, malice or ill-will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of his Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.

"So help me God."

Notices.—Notices of such nomination and appointment (of special constables), and of the circumstances which have rendered same necessary, shall be forthwith transmitted by the justices to the Secretary of State and lord lieutenant of county.

S. 2 empowers Secretary of State, on representation of justices, to order persons to be sworn in, though exempt by law. The persons so sworn shall be liable *to act for two calendar months.*

Under s. 3 the Secretary of State may direct any lord lieutenant to cause special constables to be sworn in, and no exemption allowed.

Under s. 4 justices may make regulations respecting special constables, and may remove them for misconduct.

S. 5.—**Powers of special constables.**—Every special constable appointed under this Act shall have, not only within the parish, township, or place for which he shall have been appointed, but also throughout the entire jurisdiction of the justices so appointing him, all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities, as any constable duly appointed now has within his constablewick by virtue of the common law of this realm, or of any statute or statutes.

S. 6.—Special constables may, in certain cases, *act in adjoining counties.*

Ss. 7, 8.—**Penalties.**—Penalty for refusing to serve, or for disobedience of orders, £5.

(*d*) Extended by 5 & 6 Will. 4, c. 43. See p. 126.

(*e*) See 31 & 32 Vict. c. 72, s. 12 (4), which now provides for the substitution of declaration for oaths.

S. 9.—**Power to discontinue service.**—Justices are empowered at any special session held for that purpose to suspend or determine the services of any or all of the special constables called out, and notice thereof is to be *forthwith transmitted* to the Secretary of State and lord lieutenant of county.

S. 10.—**Staves.**—Special constables are required to deliver up staves, etc., within one week of expiration of office. (Penalty for contravention, £2.)

S. 11.—**Assaulting constables.**—Penalty for assaulting or resisting any constable appointed by virtue of this Act, £20.

S. 12.—**Militia.**—Special constables are not to gain a settlement, nor be exempt from serving in militia.

S. 13.—**Allowances.**—Justices can order reasonable allowances and expenses to be paid to special constables out of county rates, and they may also order the payment of such expenses as may have been incurred in providing staves or other necessary articles.

S. 14.—Justices can adjourn special sessions from time to time if they think proper.

S. 15.—**Limitation, etc.**—Prosecutions for offences punishable upon summary conviction under this Act shall be commenced within two calendar months after the commission of the offence; and penalties shall be paid to overseer for county rate.

S. 16.—**Payment of penalties, levying, etc.**—Justices can order payment of penalty either immediately or within such period as they shall think fit. Power is given to distrain, and in default to imprison.

S. 17.—As to form in which the conviction shall be drawn up.

Ss. 18, 19.—**Venue in actions, notice, etc.**—All actions and prosecutions shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed; notice (one month) in writing to be given to defendant.

Saving clause.—Nothing in Act shall be construed to abridge any powers of justices for preserving the peace.

SPECIAL CONSTABLES ACT, 1835 (5 & 6 Will. 4, c. 43).

The powers of magistrates as to appointment of special constables are enlarged by 5 & 6 Will. 4, c. 43, which provides that all persons willing to act as special constables under the provisions of 1 & 2 Will. 4, c. 41, shall be capable of being appointed and acting, and may be appointed and act as such constables, *notwithstanding they may not be resident in such parish, township, or place* as aforesaid, or in the neighbourhood thereof; and every person appointed and acting as special constable under the provisions of this Act shall have all the same powers, privileges, and benefits, and be subject to the same duties and liabilities, as constables appointed under that Act.

SPECIAL CONSTABLES IN BOROUGHS.

As to special constables in boroughs, see Chap. VII., *post*. Special constables are to be appointed in boroughs in October of each year; "so many as the justices think fit of the inhabitants of the borough not legally exempt from serving the office of constable" are to be appointed to act as special constables in the borough (p. 140, *post*).

Regarding "TOWNS POLICE," see Chap. VII., p. 141, *post*.

MILITARY AID.

If the civil force be found insufficient to suppress riot or tumult, the military may be called upon by the magistrates to act, but their active services should in no case be required unless it is evident that the constabulary force is inadequate to maintain the peace. It may, however, be expedient to request the military to hold themselves in readiness, as the knowledge of such a step having been taken by the magistrate will frequently prevent an outbreak, by convincing the parties of the power and determination of the magistrates to suppress any disturbance.

The officer in command requires a written application to be made for the aid of the military, in order that he may be able to produce it at any future time as his protection against personal responsibility.

The King's Regulations lay down that no officer is to take out troops to suppress riot or maintain the public peace, except upon

the requisition in writing of a magistrate, or in cases of great and sudden emergency. The magistrate is to accompany the troops, and the officer is to remain near him. All commands to the troops are to be given by the officer; the troops are not on any account to fire except by word of command of their officer, who is not to give the command to fire unless distinctly required to do so by the magistrate. The officer is to exercise a humane discretion respecting the extent of the line of fire.

The Featherston Riots Commission, December, 1893, reported to the House of Commons: An order (to fire) is required from the magistrate present, but the order has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong; its absence does not excuse the officer for declining to fire when the necessity exists (38 Sol. J. 106).

Constables on Public Works.

1 & 2 Vict. c. 80, provides for the payment of constables keeping the peace near public works.

If the appointment of special constables has been rendered necessary on account of railway, canal, or other public works, through the "unlawful behaviour of labourers and others employed" thereon, an order may be made on the company carrying on the works for payment of the expenses of the constables.

Constables on Canals and Navigable Rivers.

Robberies and other outrages being frequently committed on canals and navigable rivers, power has been given to appoint constables for better keeping the peace, and for the prevention and detection of crime along the line of such canals and rivers and in the neighbourhood thereof.

Under 3 & 4 Vict. c. 50, s. 1, any two justices of the peace, and the watch committee of any incorporated borough, *on the application* of the committee or the directors of the company, or proprietors of any canal or navigable river, or of any clerk or agent of any such company duly authorised by such committee or directors, *may appoint* so many persons as they shall think fit from among those recommended to them for that purpose by such company of proprietors, clerk or agent to act as constables on or along such canal or river, and may dismiss any person so appointed (s. 2).

Duties.—Every person so appointed shall have full power to act as a constable on such canal or river, and the towing-paths and works belonging thereto, and on and within any lands and premises belonging to such company, and in all places within one quarter of a mile of such canal, river, or railway, and shall have such powers, protections, and privileges as any constable duly appointed (*f*) has within his constablewick.

Payment.—Proprietors may pay to such constables such salary or allowances as the company shall think fit.

Neglect of duty.—Penalty for neglect of duty £10, or imprisonment one month; failure to deliver up clothing, etc., on dismissal or cessation of office, is also punishable with imprisonment.

Assault on constables.—Persons assaulting or resisting such constables in the execution of their duty are liable to a penalty of £10, or two months' imprisonment.

Offences.—Every person who shall be found upon any such canal, river, or premises, or on board of any boat or vessel lying in canal or river, or in any lock or dock thereunto belonging, having in his possession any tube or other instrument for the purpose of unlawfully obtaining any wines, spirits, or other goods, or having any skin, bladder, or other utensil for the purpose of carrying away any such wine, etc., shall be liable to a penalty of £5 or one month's imprisonment.

Similar penalties attach to any person injuring any cask, box, or package containing wine, spirits, or other liquors, with intent to steal, obtain or injure the contents or any part thereof.

Apprehension of offenders.—Idle and disorderly persons found loitering at night may be apprehended without warrant, and any person offering property suspected to be stolen may be detained and delivered over to the constable.

PARISH CONSTABLES (*g*).

Parish constables were originally appointed under 5 & 6 Vict. c. 109, but by the Parish Constables Act, 1872 (35 & 36 Vict.

(*f*) Not to extend to metropolitan or municipal area.

(*g*) Now required only for certain parishes. See ss. 1 and 2, 35 & 36 Vict. c. 92. By s. 6, Local Government Act, 1894, the powers of vestries have been transferred to parish councils.

c. 92), the *general appointment of parish constables is now rendered unnecessary.* See p. 130.

Parish constables are liable to certain penalties for neglect of duty under Acts passed in the reigns of George 3 and George 4 (33 Geo. 3, c. 55, and 5 Geo. 4, c. 83). 3 & 4 Will. 4, c. 90, repeals 2 Geo. 4 (Lighting and Watching Act), and makes other provisions in lieu thereof. Sections 39—42 of Act relate to the government and duties of watchmen, but these provisions, though unrepealed, are to all intents and purposes obsolete.

Appointment and Payment of Parish Constables.

(5 & 6 Vict. c. 109 (1842).)

(Extended by 7 & 8 Vict. c. 52 (1844), and 13 & 14 Vict. c. 20 (1850), and restricted by Act of 1872.) (*h*)

Justices can hold special sessions for appointing constables.

By s. 2 justices are required within the first seven days of February in each year to issue a precept to the overseers of parish, requiring them to make out and return, before March 24th in each year, a list in writing of a competent number of men qualified to serve as constables.

Overseers can summon meeting and make out list of persons qualified.

S. 5 reads: "Every able-abodied man resident within the said parish, between the ages of twenty-five years and fifty-five years, rated to the relief of the poor, or to the county rate, on any tenements of the net yearly value of four pounds or upwards, except such persons as shall be exempt or disqualified as hereinafter mentioned, shall be qualified and liable to serve as constable of that parish."

S. 6 gives list of persons exempted, and s. 7 of persons disqualified.

S. 8 enacts that the overseers shall, on the first three Sundays in March in each year, fix on church doors, and keep for inspection, lists of persons qualified to serve. See also s. 14 as to affixing of lists of persons appointed.

(*h*) See p. 130, *post*.

Ss. 10 and 11 give details as to selection of persons by justices. A person who has once served is exempted from serving until every other qualified person has served.

Ss. 12 and 13, "oath," "substitutes," etc., are repealed by 35 & 36 Vict. c. 92, s. 3. (P. C. Act, 1872.)

S. 14. See s. 8, *ante*.

S. 15.—Constables appointed shall have within the county, and also in every adjoining county, all the powers, privileges, and responsibilities of a constable within his constablewick, but shall not be bound to act beyond the parish for which appointed, without the special warrant of a justice.

S. 16 provides for vacancies in office.

S. 17 enacts that justices of the county in general or quarter session assembled shall [subject to approval] settle table of fees and allowances to the clerks to the justices for the performance of their duties under this Act, and to the constables for the service of summons, execution of warrants, etc. (*i*).

S. 22 relates to the providing of lock-up houses.

S. 23 is repealed by 13 & 14 Vict. c. 20, s. 6 (P. C. Act, 1850), which empowers justices to appoint a "superintending constable," and constables to take charge of lock-up houses.

S. 25.—Application of penalties.

S. 26 terms "county," "parish," "overseer," defined.

PARISH CONSTABLES ACT, 1872.
(35 & 36 Vict. c. 92.)

By the Parish Constables Act, 1872, the general appointment of parish constables became *unnecessary*.

Constables are not now to be appointed except in cases where the *quarter sessions deem it necessary* for the preservation of the peace or the proper discharge of the duty in any parish.

S. 3.—When the justices shall have chosen the constable for any parish they shall make out a warrant of appointment and cause it to be served upon the person so chosen, who shall be

(*i*) This section is amended by 13 & 14 Vict. c. 20.

bound to act thereon, unless he shall secure a substitute, and the justices shall make the appointment of the person so substituted subject to provisions of 5 & 6 Vict. c. 109.

S. 4.—As to appointment of constables by vestries of parish.

S. 5.—Two or more parishes may be united for the appointment.

S. 6.—As to continuance of existing office holders.

S. 7.—*Constables appointed to be subject to the authority of the chief constable of the county.*

S. 8.—Charges not to be made for parish business.

S. 9.—Fees may be allowed to constables where costs are awarded.

S. 10.—Constables not to be compelled to serve any summons or to execute any warrant out of parish or parishes for which they are appointed.

S. 14 enacts that nothing herein contained shall apply to special constables appointed under the statutes relating thereto, nor to any officer appointed at a court leet or torn.

Terms "county," "parish" (*k*), "constable," "vestry," and "overseers" defined.

High Constables.

High constables were formerly appointed for the collection of county rates and other matters. The Act 7 & 8 Vict. c. 33 (County Rates Act, 1844), relieved high constables from the collection of rates and attendance at quarter sessions.

Under it justices of the peace are required to send precepts directly to guardians of unions for the payment of police rates.

The guardians are required to pay such rates, and the county treasurer is to receive the same.

S. 8 provided for the appointment of high constables at special instead of quarter sessions.

(*k*) "Parish," among other meanings, shall include a place for which a separate poor rate and separate overseer can be made or appointed. "Constable" shall include every petty constable, headborough borsholder, tithingman, or other peace officer of like description authorised or required to be appointed for any parish at the date of this Act.

The High Constable Act, 1869 (32 & 33 Vict. c. 47), provided for the discharge of the duties heretofore performed by high constables, and for the abolition of such office, with certain exceptions.

S. 1 defines the term "high constable," which includes any constable of any hundred or other like district, etc.

S. 2 required that after the passing of this Act, the justices for every county should consider and determine whether it was necessary that the office of high constable should be continued.

Chief constable to act.

S. 5 provides that where there is no high constable, the chief constable is to act in case of claims against the hundred, and the process for appearance in the action and the notice required in the case of the claim shall be served upon the chief constable. For "TOWNS POLICE," see p. 141, *post*.

CHAPTER VII.

COUNTY AND BOROUGH POLICE.

COUNTY POLICE.

A "Synopsis of Sections" (*a*) of the Acts relating to county and borough police are given in Chap. VIII., p. 144, *post*. Under the County Police Act, 1839 (2 & 3 Vict. c. 93, s. 3), the Secretary of State was authorised to make certain Rules for government of constabulary. The following Rules (dated April 12th, 1886) are those now in force (*b*):

RULES FOR COUNTY POLICE.

QUALIFICATIONS.

Chief constable.—His age (except in the case of his being promoted or transferred from another office in a police force, or under other special circumstances to be approved of by the Secretary of State) must not exceed forty-five years.

He must be certified by a medical practitioner to be in good health and of sound constitution, and fitted to perform the duties of the office.

He must be recommended to the Secretary of State by the magistrates in whom the appointment is vested, as a person of good character and qualifications.

Superintendent or inspector.—His age must not exceed forty years, and he must not be less than 5ft. 7in. high, without his shoes (except in the case of his being promoted or transferred from another office in a police force, or under other special circumstances to be approved of by the Secretary of State, on the recommendation of the chief constable, concurred in by two justices of the peace in petty sessions assembled).

He must be a man of good character and general intelligence, able to read and write well, and to keep accounts.

He must be certified by a medical practitioner to be in good health, of sound constitution, and fitted to perform the duties of the office.

Sergeant or constable.—His age must not exceed thirty-five years, and he must not be less than 5ft. 7in. high, without his shoes, subject to the same exception as in the case of superintendent or inspector.

He must be active and intelligent, able to read and write, and of good character and connections; and must be certified by a medical practitioner to be in good health, of a sound constitution, and fitted to perform the duties of the office.

(*a*) For "Abridgment of Sections," see APPENDIX.

(*b*) See also H. O. Circular, 1889, p. 138, *post*.

Chief clerk.—An officer of any of the grades of superintendent, inspector, sergeant, or constable may be employed as chief clerk; his rank to depend on circumstances and the strength of the force.

If a candidate for any of the above offices has been previously employed in any branch of the public service, civil or military, he shall not be eligible for appointment unless he produces satisfactory testimonials of his conduct in such service; and a person who has been *dismissed* from any police force shall not be eligible for appointment in any other police force.

No person shall be appointed to, or retained in any of the above offices who shall hold any other office or employment for hire or gain (2 & 3 Vict. c. 13, s. 10), unless the duties of such other office or employment shall be recognised, and their performance sanctioned as police duties by the Secretary of State, *or who shall sell, or have any interest in the sale of any beer, wine, or spirituous liquors.*

PAY.

The following scales of pay (which are exclusive of expenses of office, stationery, travelling on duty, or purchase of horse, cart, or forage, for which, when necessary, separate provision should be made) have been drawn up with the Secretary of State's sanction, and one or other of them, according to local circumstances, is recommended for adoption when any alteration of the existing rates of pay of a police force is proposed.

Constables (*Weekly Rates*).

	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Third class	19	10	20	5	21	0	21	7	22	2	22	9	23	4
Second class	21	0	21	7	22	2	22	9	23	4	23	11	24	6
First class	22	2	22	9	23	4	23	11	24	6	25	1	25	8
After two years in first class	23	4	23	11	24	6	25	1	25	8	26	3	26	10
After five years in first class	24	6	25	1	25	8	26	3	26	10	27	5	28	0
After eight years in first class	25	8	26	3	26	10	27	5	28	0	28	7	29	2

NOTE.—Men joining the force should be placed in the third class, and should be promoted to the second and first class only as they are found to qualify themselves for their duties. When a constable is placed in the first class he is considered to be a trained and efficient constable, and from that time payment by length of service commences.

Sergeants (*Weekly Rates*).

	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
On appointment	26	10	27	5	28	0	28	7	29	2	29	9
After two years	28	0	28	7	29	2	29	9	30	4	30	11
After five years	29	2	29	9	30	4	30	11	31	6	32	1
After eight years	30	4	30	11	31	6	32	1	32	8	33	3

Inspectors (*Yearly Rates*).

	£ s.	£ s.	£ s.
On appointment - - - - - -	90 0	95 0	100 0
After five years - - - - - -	97 10	102 10	107 10
After ten years - - - - - -	105 0	110 0	115 0

Superintendents.

	Second Class.	First Class.
On appointment - - - - - -	£120 - -	£150
After five years - - - - - -	£135 - -	£175
After ten years - - - - - -	£150 - -	£200
When holding office of deputy chief constable	£10 additional	£20 additional.

No rates of pay in excess of those in the above scales may be given except for special reasons to be submitted to the Secretary of State and approved by him.

The chief clerk may have the rank and pay of one or other of the above grades according to circumstances and the size of the force.

The chief constable's pay should depend on the strength of the force under his command and other circumstances, and should be specially fixed in each case with the approval of the Secretary of State, but should not be less than £250 a year.

Constables are not to receive for their own use any *fees*, which, by s. 8 of the (19 & 20 Vict. c. 69), are to be paid to the treasurer of the county; but the above rates of pay are intended to be exclusive of any allowance for extraordinary expenses under s. 18 of the (2 & 3 Vict. c. 93).

Clothing, Accoutrements, and Necessaries.

Superintendents, inspectors, sergeants, and constables are to be supplied with the following articles in addition to their pay, viz.:

Annually.

One coat with badge.
Two pairs of trousers.
One pair of boots and one pair of shoes, *or*
Two pairs of boots.
One hat, helmet, or cap.

Biennially.

One great coat and badge.
One serge jacket (optional).

When required, but not more frequently than once in every three years,
One cape and one pair of leggings.

A constable's staff, a pair of handcuffs, and a belt and lantern are to be supplied to each constable.

Sabres may be supplied to mounted constables, and a cutlass may be supplied to any constable whose beat is so situated that, in the opinion of two justices of the county in petty sessions assembled, it is necessary for his personal protection in the performance of his duty. The cutlass is to be worn at night only, or at times when rioting or serious public disturbance has actually taken place or is apprehended. A chief constable may, upon any sudden emergency, order that one or more of the constables should be so armed: he shall, on each occasion of giving any such order, report the same, and the reason for such order, to any two justices of the peace for the county as soon afterwards as is practicable.

No constables of any county force are to use or to be armed with revolvers, except with the sanction of the Secretary of State and under regulations to be approved by him.

GENERAL INSTRUCTIONS.

The chief constable will cause a register of charges according to the annexed form (p. 137) to be kept at each division under his orders as a record of the criminal cases in the division. He will also cause a general report book of all cases reported to the police to be kept at each division of the county.

CONSTABULARY.

REGISTER OF CHARGES for the month of

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
No. of Charge.	Date and Hour of Apprehension.	Persons charged : Name, Address, and Occupation.	(Large.)	Persons charging : Name, Address, and Occupation (and personal signature if not on warrant).	Witnesses : Name, Address, and Occupation.	By whom taken into custody and whether on warrant.	Property. Personal Property found on Prisoner and how disposed of.	Property, subject of charge, found on Prisoner or elsewhere, and how disposed of.	Detained.	Whether admitted to bail, and if so, Day and Hour.	Signature of Constable taking the charge.	No. of Charge.	Magistrates before whom charge is brought.	Charge how disposed of.	When liberated or handed over to Gaoler.	Result of Trial at Assizes or Sessions, and whether sentenced to Police Supervision.	General Classification of Offence.	Description of Prisoner. Age. Height. Hair. Eyes. Complexion. Particular marks. Character if known.	Remarks.

NOTES.

Column 1.—The numbering of the charges should commence from September 30th annually. But see now Police Returns Act, 1892 (*c*).

Column 8.—The entries in this column should show whether the property is returned to the prisoner, sent to the gaol, returned to the owner, or how else it is disposed of, and they should correspond to receipts for the property, which should be taken in every case before it is given up by the police.

Column 13.—If a fine is inflicted, it should be stated whether the fine is paid, or the prisoner committed in default.

Column 16.—The offence should be classified in accordance with the classification followed in making up the Government returns of crime for the year. See "Instructions" issued in connection with new forms of returns.

(*c*) Page 151, *post*.

The chief constable will make an immediate report to two justices of the peace of any serious disturbance of the public peace that has taken place or is apprehended, and of any crimes of an aggravated nature committed, for which the parties charged or suspected have not been apprehended; and in order that further arrangements, if required, may be made without delay, he will immediately transmit duplicates of such information to the Secretary of State for the Home Department, so as to ensure the earliest communication to the proper authorities of any matter affecting the public peace.

The chief constable will, subject to the approval of the justices, frame all such orders and regulations as he shall deem expedient for the government of the force, and shall submit to the justices at every quarter sessions copies of all regulations and general orders made by him since the preceding sessions.

The chief constable will make a report in writing to the justices assembled at every quarter sessions of the peace for the county, of the amount and effective state and operation of the force, and shall append thereto a statement of the distribution of the force, of the number of persons apprehended by the police, the nature of the charges against them, and the result of the proceedings, the number of offences reported to the police, and any other particulars which may tend to show the state of crime in the county. Immediately after the termination of the sessions, the chief constable shall transmit a copy of this report to the Secretary of State for the Home Department, with a copy of any note or minute made thereon by the justices. But the chief constable need not transmit with such report the statement appended thereto, unless directed to do so by the justices.

CIRCULAR—INCREASES IN FORCE—OFFICERS, PAY, ETC.

A Home Office circular, dated January 17th, 1889, directs that as no direct Government contribution will hereafter be made in aid of local police expenditure, it will no longer be necessary for the local police authorities to submit, for the Secretary of State's approval, proposals involving increase of cost, with a view to providing for the increased charge in the estimates.

The instructions in the circulars of March 24th, 1876, October 16th, 1877, and February 18th, 1878, are, therefore, no longer in force.

The Secretary of State's sanction, however, is still required—

(1) For any alteration of the number of constables in a county police force (2 & 3 Vict. c. 93, s. 2).

(2) For any alteration in the number of superintendents and in the other ranks of officers (3 & 4 Vict. c. 88, s. 26).

(3) For any alteration in the number of constables in any district of a county divided into police districts under 3 & 4 Vict. c. 88, s. 27.

The rates of pay of county constabulary will continue subject to the Rules of April 12th, 1886, made under 2 & 3 Vict. c. 93, s. 3; and the Secretary of State's sanction will be required for any rates of pay exceeding the scales mentioned in those Rules.

BOROUGH CONSTABLES AND TOWNS POLICE.

Police forces were first established in boroughs under 5 & 6 Will. 4, c. 76 (1835).

That Act was repealed by the Municipal Corporations Act, 1882; Part IX. of which contains provisions regarding the appointment, etc., of police in boroughs, and the Police (England) Acts (1839 to 1890) contain various enactments relating to "consolidation," "reciprocity," etc., between county and borough police (*d*).

Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

This Act provides for appointment of a watch committee in a borough, who under s. 191 are empowered to appoint constables.

Jurisdiction.—A borough constable shall be sworn in before a justice, and when so sworn shall in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges and be liable to all such duties and responsibilities as any constable has and is liable to for the time being in his constablewick at common law or by statute, and shall obey the lawful commands of a justice having jurisdiction in the borough or in any county in which the constable is called on to act (s. 191).

Regulations.—The watch committee may frame such regulations as they deem expedient for promoting efficiency. The committee or any two justices *can suspend, and committee can dismiss constables*, but nothing contained in the section is to interfere with the operation of 3 & 4 Vict. c. 88.

Apprehension.—A borough constable may, while on duty, apprehend any idle or disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the

(*d*) As to "Consolidation," see p. 147, *post*; "Reciprocity," p. 145; "Crime Returns," p. 146; and "Treasury contributions," p. 149.

borough constable in attendance at the nearest watch house, in order that he may either be secured until he can be brought before a justice, or where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice (s. 193).

Neglect.—If a constable is guilty of neglect of duty or of disobedience to a lawful order he may be imprisoned or fined 40*s.* or dismissed (s. 194).

Assaults.—Persons assaulting constables are liable to a penalty of £5 (s. 195).

Rates.—As to levy of watch rate, etc., see ss. 197 to 200 of Act.

Returns as to criminal and other returns, see p. 146, *post*.

SPECIAL CONSTABLES IN BOROUGHS.

Under s. 196 of Act two or more justices having jurisdiction in a borough shall, in October of every year, appoint by a precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempted from serving the office of constable, to act as special constables in the borough.

Each constable is to make a declaration to the effect of the oath set forth in 1 & 2 Will. 4, c. 41 (*e*).

He shall act when required by the warrant of a justice, but not otherwise, and the warrant shall state that the ordinary police force is insufficient to maintain the peace. Persons entitled to vote at a parliamentary election are not liable to serve as special constables during the election. Special constables are entitled to remuneration of 3*s.* 6*d.* a day, and may receive further sums in accordance with the Fifth Schedule of Act.

The following is the text of the section referred to :

"(1) Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint, by precept signed by them, so many as they think fit of the inhabitants of the borough not legally exempt from serving the office of constable, to act as special constables in the borough.

(*e*) As to Form of Oath, see p. 124, *ante*.

"(2) Every such special constable shall make a declaration to the effect of the oath set forth in the Special Constables Act, 1831, and shall have the powers and immunities, and be liable to the duties and penalties, enacted by that Act.

"(3) He shall act when so required by the warrant of a justice having jurisdiction in the borough, but not otherwise.

"(4) The warrant shall recite that in the opinion of the justice the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

"(5) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

"(6) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules."

Towns Police.

In towns in which there may be a special Act for the regulation of the police after July 22nd, 1847, certain sections of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89) (*f*), if embodied, apply.

The mode of appointing constables is set forth in Act.

The expenses of prosecution and allowances to such constables are provided for.

Constables are liable to a penalty of £5 or fourteen days' imprisonment should they resign without leave or notice.

A constable dismissed or resigning is required to deliver up his accoutrements. Penalty for unlawful possession of same, £10.

Commissioners are empowered to provide offices, watch-houses, etc.

S. 14 enacts that the constables appointed by virtue of this and the special Act shall keep watch and ward within the limits of the special Act, and shall use their best endeavours to prevent all felonies, misdemeanors, and breaches of the peace.

(*f*) An Act "for consolidating in one Act certain provisions usually contained in Acts for regulating the police of towns."

Under s. 15 any person found committing any offence punishable either upon an indictment or as a misdemeanor upon summary conviction by virtue of this or the special Act may be taken into custody, without a warrant, by any of the said constables, or may be apprehended by the owner of the property on or with respect to which the offence is committed, or by his servant or any person authorised by him, and may be detained until he can be delivered into the custody of a constable; and the person so arrested shall be taken, as soon as conveniently may be, before some justice, to be examined and dealt with according to law: Provided always, that no person arrested under the powers of this or the special Act shall be *detained in custody* by any constable or other officer, without the order of some justice, longer than shall be necessary for bringing him before a justice, or than *forty hours at the utmost*.

Neglect of Duty.—S. 16 enacts that every constable acting within the limits of the special Act who is guilty of any neglect or violation of his duty as a constable, and convicted thereof before two justices, shall be liable to a penalty not exceeding £10: the amount of which penalty may be deducted from his salary or wages, or he may be imprisoned for one month with hard labour.

Recognisances.—S. 17 empowers the superintendent constable or superior officer of police to take recognisances in certain cases.

Assaults.—S. 20. Persons are liable to a penalty of £5 or one month's imprisonment for assaulting constables in execution of duty.

As to obstructions and nuisances in streets (ss. 21—28), drunkenness (s. 29), fires (ss. 30, 31), and various other matters, see title "TOWN POLICE CLAUSES ACT, 1847," GENERAL SUBJECTS, *post*.

CHAPTER VIII.

POLICE ACTS.

The County and Borough Police Acts, cited as the Police (England) Acts in the Fifth Schedule of the Police Act, 1890 (53 & 54 Vict. c. 55), have, owing to the passing of that Act and other recent legislation, been to a great extent amended, and powers hitherto exercised by quarter sessions are now vested in a Standing Joint Committee composed of an equal number of justices and members of the county council.

Upwards of *forty sections* of the Acts referred to have been repealed or to a greater or less extent amended, and important changes have been made in the method of procedure. The Acts cited in the Schedule are tabulated, and a synopsis of their principal provisions is here given in a consolidated form. An "abridgment" of the several sections referred to will be found in the APPENDIX.

POLICE (ENGLAND) ACTS (*a*).

Session and Chapter.	Description.	Short Title.
2 & 3 Vict. c. 93.	An Act for the establishment of county and district constables.	County Police Act, 1839.
3 & 4 Vict. c. 88.	To amend the Act of 1839 - -	County Police Act, 1840.
19 & 20 Vict. c. 69.	To render more effectual the police in counties and boroughs.	County and Borough Police Act, 1856.
20 Vict. c. 2.	Appointment of chief constable for adjoining counties.	County Police Act, 1857.
22 & 23 Vict. c. 32.	To amend the law concerning police in counties and boroughs.	County and Borough Police Act, 1859.
28 & 29 Vict. c. 35.	To amend the law relating to police superannuation funds—counties and boroughs.	Police Superannuation Act, 1865.

[Sections 190 to 194 (inclusive) of the Municipal Corporations Act, 1882, shall for the purposes of the Police Act, 1890, be deemed to form part of the Acts in Schedule.]

(*a*) For digest of the Police Disabilities Removal Act, 1887 (Voting) and subsequent Acts relating to police passed in 1893, 1897, 1900 and 1902 see pp. 149—152.

The Police (England) Acts and the Police Act of 1890, may be cited together as the Police Acts, 1839 to 1890.

SYNOPSIS OF SECTIONS.

ESTABLISHMENT OF FORCES.

The *discretionary* powers given to justices for establishment of forces under Act of 1839 (*b*), were made *compulsory* by the Act of 1856. The Secretary of State was empowered to make "Rules" for government of police (Act of 1839) (*c*).

The appointment of chief and petty constables is provided for by the Act of 1839: chief constable, ss. 4, 5; petty constables and superintendents (*d*), s. 6; deputy chief constable, s. 7.

"Additional" constables (*e*) may be appointed at request and expense of persons applying for same (Act of 1840, s. 19), see Chap. VI., *ante*.

Authority and jurisdiction (*f*).—Persons appointed to county police forces shall be sworn as constables before a justice of the county (Act of 1839, s. 8), and shall have all powers and privileges in the county and in liberties, franchises and detached parts of other counties situated within the county, and also *in any county adjoining* to the county for which they are appointed, which any constable duly appointed has within his constablewick by virtue of the common law or any statute.

(*b*) Section 1, which limited number of constables to be appointed to *one constable to every* 1,000 *inhabitants*, is now repealed (Statute Law Revision Act, 1874 (2)).

(*c*) See Chap. VII., *ante*.

(*d*) Justices (now S.J.C.) may direct the *number* of Superintendents to be appointed (where it appears unnecessary to appoint one for each petty sessional division), also inspectors and sergeants. As to allowances to officers, see Police Act, 1840, s. 26, and Police Act, 1856, s. 7.

(*e*) As to "special constable," see Chap. VI., *ante*.

(*f*) Police have only authority in district for which sworn in, and if called upon to act elsewhere they must be sworn in for the fresh district or else be provided with a warrant properly "backed," but police sent on duty under agreement in accordance with the Police Act, 1890, s. 25, need not be sworn.

In case of "fresh pursuit," a constable with warrant may follow offender, if in actual pursuit, to distance of seven miles from confines of jurisdiction.

The provisions of 1 & 2 Will. 4, c. 41 (Special Constables Act) shall be deemed to extend to constables appointed under the Act (1839).

Reciprocal powers.—The reciprocal powers of county and borough constables are given in s. 6 of 19 & 20 Vict. c. 69 (Act of 1856). See APPENDIX. As to liability of county constables to act in boroughs and borough constables to act out of boroughs for which appointed, see APPENDIX, 22 & 23 Vict. c. 32, s. 2 (Act of 1859).

Although a county may be divided into "police districts," the constables shall be subject to duty in any part of the county (Act of 1840, s. 28).

Privileges and prohibitions.—Police are "restrained" from undertaking "other employment (*g*) for gain or hire" (Act of 1839, s. 10).

They are exempted from payment of toll when on duty (Act of 1840, s. 1).

The disability of police as to voting at elections (Acts of 1856, s. 9, and 1859, s. 3), is now removed. See "Disability of Police Removal Act," *post*.

The prohibition as to receipt of "half-pay" (Act of 1839, s. 11), is repealed by 50 & 51 Vict. c. 67, s. 14.

Punishments.—The chief constable of a county or the watch committee of a borough can *suspend* any constable or *reduce* him, or fine him a week's pay by way of punishment (Act of 1859, s. 26).

Quarter sessions, returns, etc.—As to attendance at quarter sessions, etc., by chief constable, see Act of 1839, s. 17, also as to reports to be made to justices (*h*). Superintendents of divisions are to attend the sessions of justices within their divisions and make like reports to justices.

(*g*) Except employment be sanctioned as "police duties" by Secretary of State.

Persons interested *in liquor traffic* are ineligible for police service. See Secretary of State Rules, April 26th, 1886, Chap. VII., *ante*.

(*h*) Reports are also made to the Standing Joint Committee (Local Government Act, 1888).

Constables are required to perform such duties (additional) in counties and boroughs as justices may direct (*i*) (Act of 1856, s. 7).

[By a special proviso in Local Government Act, 1888 (51 & 52 Vict. c. 41), the power under foregoing section shall continue to be exercised by quarter sessions and standing joint committee, *and may also be exercised by county council*, and nothing in the Local Government Act shall affect the powers of justices or the obligations of constables to obey their lawful orders.]

Returns of force.—The chief constable is, by s. 31, Act of 1840, required to transmit to clerk of peace certain returns showing disposition and numbers of constabulary, the same to be laid before justices.

Superintendents are to make similar returns to chief constable.

Returns of crime.—The annual (Government) returns of crime required under s. 14, Act of 1856, are now amplified and treated of under the Police Returns Act, 1892, see *post*. The returns are required at the end of each calendar year, instead of (as formerly) in October.

Expenses, etc.—Section 18 of County Police Act, 1839 (2 & 3 Vict. c. 93), requires that "reasonable allowances" be made to chief constable for extraordinary expenses necessarily incurred (*k*). Under s. 24, Act of 1859, a chief officer may recommend a constable for *gratuities* for meritorious action. See "Gratuities," p. 148, *post*.

Neglect of duty, etc.—Any constable who shall be guilty of neglect or violation of duty shall, on conviction before two justices, be liable to a penalty of £10 (deductable from any salary due) or to one month's imprisonment (Act of 1839, s. 12).

Resignation without notice.—No constable is to resign or withdraw from duty unless expressly allowed to do so, or unless he shall give one calendar month's notice (Act of 1839).

(*i*) Justices may direct police to keep order in Assize Court (Act of 1859, s. 18).

(*k*) The case of *Stopps v. Northamptonshire JJ.* (1883), 51 J. P. 756, and s. 66 of Local Government Act, 1888, are pertinent to matter.

Section 66 of Local Government Act, 1888, now provides that all costs incurred by justice or constable *in defending legal proceedings taken against him for order made or act done in execution of duty* shall, to such amount as may be sanctioned by the standing joint committee, be paid out of the county fund.

The section is amended by s. 4 of Act of 1859. The procedure as to notice to treasurer, etc., is fully set forth in statute.

Retaining accoutrements.—Any constable ceasing to hold office and retaining any police clothes or accoutrements is liable on conviction to one month's imprisonment (Act of 1839, s. 14).

Assuming police dress.—To assume dress or character of constable for unlawful purpose renders offender liable to penalty of £10 (Act of 1839, s. 15).

Harbouring police (*l*).—Publicans knowingly harbouring or entertaining any constable when on duty are liable to penalty of £5 (Act of 1839, s. 16).

Warrants.—The procedure re execution of warrants (commitment) is fully set out in Act of 1840, s. 33 (APPENDIX).

Station houses.—Police authorities have power to provide station houses and strong rooms, and can borrow money for purpose under ss. 12 and 13 of Act of 1840.

The Act of 1856, ss. 22 to 24, contains further provisions thereon (*m*). See also 11 & 12 Vict. c. 101, as to lock-up houses on borders of counties.

Consolidation of forces.—The procedure and arrangements for consolidation of borough police with county establishment are set forth in s. 14 of County Police Act, 1840. See APPENDIX. (Under the Local Government Act, 1888, the police of boroughs with a population of less than 10,000 are merged in county force.)

By s. 5 of Act of 1856, her Majesty in Council may arrange terms of consolidation, and (by s. 20) the sanction of Secretary of State is required before any agreement made can be determined.

Police districts.—A county may be divided into "police districts" subject to approval of Secretary of State, the "general" and "local" expenditure being duly provided for (Act of 1840, ss. 27, 28).

Justices can consolidate or merge police districts (Act of 1859, s. 1, and ss. 22, 23).

(*l*) See also special provisions in the Prevention of Crimes Act, 1871, Licensing Acts, etc.

(*m*) By s. 24 of the same Act the provisions of 7 Geo. 4, c. 18, as to disposal of "unnecessary station houses, etc." are extended to this Act.

Liberties, etc.—All detached parts of counties and liberties are to form part of the county by which surrounded or with which they have the largest common boundary.

Section 2 of Act of 1840, provides for transference of "outlying districts." See also 7 & 8 Vict. c. 61, and 21 & 22 Vict. c. 68.

Section 34 of Act of 1840 (interpretation clause) defines "county" as taken in connection with "liberty" or "franchise." The section also contains a proviso *re* Isle of Ely, and s. 30 of the Act of 1856 contains a proviso as to the soke or liberty of Peterborough, and also as to Cinque Ports, and towns of Winchelsea and Rye.

Finance.—The County Police Act of 1839 (s. 20) provided for the payment of police expenses out of *county* rate, but the Act of 1840 (s. 3) empowered the making of a special *police* rate. The matter of "rating" is dealt with in ss. 4, 5, 6, 7, 8, and 9 (*n*) of Act of 1840. Sections 25 and 26 of Act provide for assessment when a county is divided and two chief constables appointed; ss. 12 and 13 of Act provide for the borrowing of money, where a county is divided into "police districts."

Fees.—Sections 16—18 of Act of 1840 were repealed by s. 28 of Act of 1859, but the power of justices to settle tables of fees and allowances (subject to approval of the Secretary of State) was retained as far as related to county constabulary. This section (28) is in its turn repealed by the Police Act, 1890, which requires (s. 23) that every police authority shall *at least once in five years* submit for the approval of the Secretary of State a table of fees payable to constables in respect of service of summonses, warrants, etc. (*o*).

Section 11 of Act of 1859 deals with "fees" in boroughs. See APPENDIX.

Gratuities.—The Police Act, 1890 (s. 24 and Sched. 4), deals with gratuities to constables for "meritorious action."

So much of section as limited the amount of reward (to £3) is repealed. See APPENDIX.

(*n*) Portions of s. 8 are repealed by S. L. Revision Act, 1874 (2).

(*o*) See "Fees," s. 23 of Police Act, 1890 (APPENDIX, and Chap. V., *ante*).

Government Inspectors of Constabulary.—Section 15 of Act of 1856 authorises the appointment of three persons as her Majesty's Inspectors of Constabulary for England and Wales, who are required to report on the state and efficiency of police to the Secretary of State.

Treasury Contribution.—The certificate of the Secretary of State that police are efficient is required before a force can participate in the Government contribution (*p*).

Superannuation.—The Police Superannuation Act of 1865 is virtually repealed by the Police Act of 1890.

Police Act, 1890.—Under the Police Act of 1890 constables become *entitled* to pensions after twenty-five years' service (if *medically unfit*, after fifteen years' service).

The Act of 1890 is very voluminous, and its provisions are of great importance to the police ; a digest of the Act will be found in the APPENDIX.

POLICE DISABILITIES REMOVAL ACT, 1887.

(50 VICT. c. 9.)

To remove Disabilities of Police to vote at Parliamentary Elections.

S. 1 repeals certain enactments (mentioned in Schedule to Act) relating to voting by police.

S. 2 enacts that where a constable is or is likely to be, on the day of any election, sent or employed in the discharge of his duty so as to prevent him voting at the polling booth or station at which he would otherwise be entitled by law to vote, the following enactments shall have effect :

(1) Such constable may, at any time within seven days before the election, *apply to the chief constable* (*q*) *for a certificate*, and the chief constable shall thereupon give a certificate under his hand, stating the name of the constable, his

(*p*) One fourth the charge for pay and clothing was formerly paid by the Treasury under s. 16, but all limit in amount of contribution was removed by 38 & 39 Vict. c. 48, and the Police Act, 1890 (s. 17) now provides for the distribution amongst police forces of sums granted out of customs and excise duties for police superannuation. See APPENDIX, *post*.

(*q*) "Chief constable" includes an assistant chief constable, a head constable, and any other person for the time being in command of a police force, or acting in that capacity.

number in the police force, *his number and description on the register of voters, and the fact* that he is so sent and employed ;

(2) Presiding officer at polling booth is required to receive and record vote given.

S. 3.—A police officer shall be deemed "an inhabitant occupier" of a dwelling-house, notwithstanding temporary absence therefrom in execution of duty, provided the period of absence does not exceed four consecutive months.

S. 4 amends s. 9 of 19 & 20 Vict. c. 2.

FORM OF CERTIFICATE.

In the (*r*) of . No. .
The day of , 189 , (*s*), of , a constable of the police force of the said (*r*) , whose number in the said force is number , and whose rank in the said force is that of , and whose number and description on the register of voters entitled to vote at the election of members to serve in Parliament for the (*t*) of is as follows (*u*) , having applied to me the undersigned, this day, being within seven days before the election of members for the said (*t*) for a certificate under section 2 of the Police Disabilities Removal Act, 1887, I hereby certify that the said (*s*) of is [*or* is likely] to be so employed on the day of next, at in the discharge of his duty as such constable as hereinbefore described as to be prevented from voting in the said election at the polling booth at , at which he would otherwise be by law entitled to vote.

(Signed) . (See s. 2 (4).)

POLICE DISABILITIES REMOVAL ACT, 1893.

(56 VICT. C. 6.)

An Act to remove Disabilities of Policemen with regard to their Vote in Municipal, School Board and other Elections.

S. 1.—Certain enactments (mentioned in Schedule to Act) (*x*) disqualifying police from voting at municipal and other elections are repealed.

S. 2.—The provisions of s. 2 of the Police Disabilities Removal Act of 1887 shall apply to all municipal and other elections, as well as parliamentary elections.

(*r*) County or borough.
(*s*) Name and address of constable.
(*t*) Describe constituency. (*u*) Insert copy from register of voters.
(*x*) Certain words in s. 9 of Act of 1856, and in s. 3 of Act of 1859.

Canvassing.—The prohibitions as to canvassing (Act of 1856, s. 9, and 1859, s. 3), which were not touched by the Act of 1887, are also not affected by this Act. Police are still liable to a penalty of £10 if they attempt "to persuade" an elector to give, or "dissuade" an elector from giving, his vote.

POLICE RETURNS ACT, 1892.

(55 & 56 VICT. c. 38.)

Under this Act the annual statement required by s. 14 of 19 & 20 Vict. c. 69 (Police Act, 1856), is to be made for each *calendar* year, and shall be transmitted to Secretary of State so soon as may be after termination of each year.

POLICE PROPERTY ACT, 1897.

(60 & 61 VICT. c. 30.)

As to Disposal of Property in the Possession of the Police.

1. Where any property has come into the possession of the police in connection with any criminal charge, or under s. 66 of the Metropolitan Police Act, 1839; s. 48 of 2 & 3 Vict. c. xciv.; s. 103 of the Larceny Act, 1861; or s. 34 of the Pawnbrokers Act, 1872, a court of summary jurisdiction may, on application either of police or a claimant of the property, make an order for the delivery of the property to the person appearing to court to be the owner thereof, or (if owner be unknown) such order as to the court may seem meet.

Proviso.—Such order shall not affect the right of any person to take (within six months) legal proceedings against any person in possession of the property.

2. A Secretary of State may make regulations (*y*) with respect to unclaimed property in possession of police.

The regulations may authorise the application of the proceeds of any such property if sold, also as to application of money unclaimed.

(*y*) See Home Office Circular, APPENDIX, *post*.

When the property is a perishable article or its custody involves unreasonable expense or inconvenience, it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the police for a year In any other case the property shall not be sold until it has remained in the possession of the police for a year.

The regulations may also provide for investment of money and audit of accounts.

RESERVISTS.

Two Acts relating to police reservists were passed in 1900 and 1902 to meet the case of army reserve men serving in police who were called out for service, in pursuance of the Royal Proclamation dated October 7th, 1899 :

POLICE RESERVISTS (ALLOWANCES) ACT, 1900.
(63 VICT. C. 9.)

The Act authorises the grant *out of police funds* of certain allowances and gratuities in respect of police reservists who are called out on permanent service.

Section 1 empowers police authorities to grant allowances to families of constables belonging to the Army Reserve called out for personal service under Royal Proclamation of October 7th, 1899.

A constable returning to police force can take up his former rank.

POLICE RESERVISTS ACT, 1902.
(2 EDW. 7, C. 10.)

Where a police constable has been called out for permanent service under Royal Proclamation, October 7th, 1899, his period of service under that proclamation may, if the police authority think fit, reckon towards pension as "approved service" under the Police Act, 1890, or the Police (Scotland) Act, 1890.

PART III.

GENERAL SUBJECTS

(CRIMINAL AND QUASI-CRIMINAL).

ALPHABETICALLY ARRANGED.

ABDUCTION.

(24 & 25 Vict. c. 100, ss. 53—55.)

This offence, which is felony, may be divided into two classes :

(1) The forcible abduction of a woman on account of her fortune, with intent to marry or defile her ; and

(2) The unlawful abduction of a girl *under sixteen* from her parents or guardians.

For statutory provisions, see "Criminal Law Consolidation Acts," Appendix, *post.*

Under the Criminal Law Amendment Act, 1885, the abduction of any girl *under eighteen* is a *misdemeanor* (48 & 49 Vict. c. 69, s. 7). See title "Women and Girls," *post.*

ABORTION, ATTEMPTS TO PROCURE.

For statutory provisions, see 24 & 25 Vict. c. 100, ss. 58, 59 ; "Criminal Law Consolidation Acts," Appendix, *post.*

The crime resolves itself into three divisions :

(1) Where a woman, *being with child* (*a*), with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent ; or

(*a*) When the woman is charged it is necessary to show that she was actually with child, which is not necessary when another person is charged

(2) Whosoever with intent to procure the miscarriage of any woman, *whether she be or be not with child*, shall unlawfully administer to her any poison or other noxious thing, or shall use any instrument with the like intent, shall be guilty of felony. Punishment, penal servitude for life, or imprisonment for two years.

(3) To unlawfully and knowingly supply or procure any poison or noxious thing or instrument with intent to procure the miscarriage of any woman, *whether she be or be not with child*, is a misdemeanor, punishable by five years' penal servitude or two years' imprisonment.

ACCESSORIES.

(24 & 25 Vict. c. 94.)

Those who are implicated in the commission of crimes are either principals or accessories. But this distinction exists only in the case of felonies.

An accessory is he who is not the chief actor in the offence, nor present at its performance, but in some way concerned therein either before or after.

An *accessory before the fact* is one who being absent at the time counsels or abets another.

An *accessory after the fact* is one who knowing a felony to have been committed receives or assists the felon (*b*).

Accessories before the fact can be punished as principals. In misdemeanors and treasons there can be no accessories: all implicated are principals.

A *receiver of stolen goods* may be indicted and convicted either as an accessory after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, but no person howsoever tried for receiving shall be liable to be prosecuted a second time for the same offence (Larceny Act, 1861, s. 91).

As to indictment of accessory before conviction of principal, see ss. 1—3 of statute, p. 155, *post*.

with the offence, but she may be charged with conspiring with others to commit the offence although not in fact pregnant (*R.* v. *Cross*, *Whitehurch and Others* (1890), 24 Q. B. D. 426; 54 J. P. 472).

(*b*) A wife succouring her husband is not punishable as an accessory after the fact, but the husband cannot assist the wife; nor will merely suffering the principal to escape make the party an accessory after the fact. Some actual assistance must be given (*R.* v. *Chapple*, 9 C. & P. 355).

Principals.—A *principal in the first degree* is the actual perpetrator of the crime. Actual presence is not necessary. A constructive presence is in some cases sufficient, as where one commits a robbery and another keeps watch. A party may be liable as a principal and be absent, as he that puts poison into anything to poison another.

A *principal in the second degree* is he who is present aiding and assisting with a felonious intent, as in the case of stealing in a shop. If several are acting in concert, some in the shop and some out, those outside are equally guilty as principals of the offence of stealing in the shop. But the offender must be aiding, assisting and abetting—mere presence is not enough.

Principals in the second degree are frequently termed *aiders and abettors*, sometimes "*accomplices*."

Accomplices.—An accomplice frequently offers to give evidence ("King's evidence") against the principal. A justice has no power to make a promise of pardon to such persons, and it is his duty to commit an accomplice for trial, notwithstanding that it is intended he should give evidence for the prosecution.

If a committal takes place on the evidence of the accomplice, the accomplice should also be committed and not allowed to go on bail, lest he abscond (*R.* v. *Beardmore* (1836), 7 C. & P. 497).

It is a rule of *practice*, though not of *law*, that the evidence of an accomplice must be confirmed in order to render a conviction valid. As to the extent of the confirmation what should be looked for, see *R.* v. *Barnard* (1823), 1 C. & P. 87; *R.* v. *Wilkes* (1836), 7 C. & P. 272.

ACCESSORIES AND ABETTORS ACT, 1861.

(24 & 25 VICT. C. 94.)

(*Synopsis of Sections.*)

ACCESSORIES BEFORE THE FACT.

S. 1.—Whosoever shall become an accessory before the fact to any felony, may be indicted, and punished in all respects as if he were a principal felon.

S. 2.—Whosoever shall counsel, procure, or command any other person to commit any felony, shall be guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted.

ACCESSORIES AFTER THE FACT.

S. 3.—Whosoever shall become an accessory after the fact to any felony, may be indicted and convicted either as an accessory after the fact to the

principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or shall not have been previously convicted.

S. 4.—Every accessory after the fact to any felony (except where it is otherwise specially enacted), shall be liable to imprisonment for any term not exceeding two years.

S. 5.—As to prosecution of accessory after principal has been convicted, but not attainted.

S. 6.—Several accessories may be included in the same indictment.

S. 7.—Where any felony shall have been wholly committed within *England* or *Ireland*, the offence of any person who shall be an accessory either before or after the fact to any such felony may be dealt with by any court which shall have jurisdiction to try the principal felon.

ABETTORS IN MISDEMEANORS.

S. 8.—Whosoever shall aid, abet, counsel, or procure the commission of any misdemeanor shall be liable to be punished as a principal offender.

S. 9.—As to offences in the jurisdiction of Admiralty.

ACCIDENTS TO WORKMEN.

(57 & 58 VICT. c. 28.)

The Notice of Accidents Act, 1894, enacts that where there occurs in any employment to which the section applies any accident which causes to any person employed therein either loss of life or such bodily injury as *to prevent him* on any of the *three working days* next after the occurrence of the accident *from being employed for five hours* on his ordinary work, his employer shall as soon as possible send to the Board of Trade notice in writing of the accident, with particulars as to same. Penalty for default, 40s.

The Act applies to use, working or repair of any railway, tramway, canal, bridge, tunnel, or other work authorised by Act of Parliament; the use or working of any traction or other engine worked by steam in the open air. See also Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 104—106.

ADULTERATION.

Adulteration of food.—See title "FOOD AND DRUGS," *post*.

Adulteration of seeds.—Under 32 & 33 Vict. c. 112, persons are liable to penalties for killing or dyeing seeds, or selling same with intent to defraud.

ADVERTISEMENTS.

See title, "INDECENT ADVERTISEMENTS," *post*.

AFFRAY.

See under "RIOT," p. 18, *ante*.

AGENTS, FACTORS, Etc.

See title, "LARCENY," *post* (*c*), and ss. 77, 78, "Larceny Act," APPENDIX.

See also Bankruptcy Act, 1898, s. 71.

AGRICULTURAL GANGS.

The Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130), regulates the employment by gang masters of children, young persons, and women in agricultural gangs. Gang masters must be licensed, and a female, if women be employed. The licence is in force for six months. Females shall not be employed in the same gang as males.

No child under eight (*d*) years of age is to be employed in any gang (s. 4 of Act).

Penalty on gang master for contravention of Act, and on any occupier of land, not exceeding 20*s*. for each child, young person, or woman so employed. Penalty for acting as gang master without licence, 20*s*. per day.

ANIMALS, DISEASES OF.

The Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), consolidates and repeals the Contagious Diseases (Animals) Acts, 1878 to 1893. It prescribes the procedure for enforcing the Orders of the Board of Agriculture (*e*) and the regulations of local authorities who are required to enforce the Act.

Local authorities.—In counties the county council is the local authority, but the council may delegate its powers to committees.

In municipal boroughs the council is the authority.

Every local authority shall appoint inspectors and other officers for the execution and enforcement of Act (s. 35).

(*c*) Sections 75 and 76 of Larceny Act, 1861, are repealed by Larceny Act, 1901. These sections applied to Factors and other Agents. See under title, "LARCENY," *post*, and APPENDIX.

(*d*) Under the Elementary Education Amendment Act, 1899, no child is to be taken into employment under twelve years of age, but this is not to apply to a child who, on January 1st, 1900, was under any byelaw then in force exempt wholly or partially from the obligation to attend school.

(*e*) Now designated Board of Agriculture and Fisheries.

Diseases.—The Act contains a variety of provisions as to the course (*f*) to be adopted on outbreaks of cattle plague, foot-and-mouth disease, pleuro-pneumonia, swine fever, etc.; as to slaughter of animals, and payment of compensation (half to three-quarter's value) out of public money, see ss. 5—22. The Board of Agriculture may make such orders under the Act as they think fit (s. 22).

Offences.—A number of offences are enumerated in ss. 52 and 53 of Act.

These include failing to give notice of disease; failing to comply with order or regulation prohibiting movement of cattle, carcases, fodder, etc.; obstructing or impeding inspector or constable; improperly disposing of carcases of diseased animal or unlawfully digging up buried carcases (*g*); attempting to obtain compensation by fraud, etc., and offences in relation to licences.

Penalties for offences.—Section 51 of Act enacts:

If any person is guilty of an offence against this Act, he shall for every such offence be liable—

(1) to a fine not exceeding twenty pounds; or

(2) if the offence is committed with respect to more than *four animals*, to a fine not exceeding five pounds for each animal; or

(3) where the offence is committed in relation to carcases, fodder, litter, dung, or other thing (exclusive of animals), to a fine not exceeding ten pounds in respect of every half ton in weight thereof after one half ton, in addition to the first fine of not exceeding twenty pounds.

The following Orders must be referred to for offences too numerous to specify (s. 22 of Act): Swine Fever Order, 1894 (No. 5193); Swine Fever (Temp.) Order, 1894 (No. 5218); Glanders or Farcy Order, 1894 (No. 5235); Cattle Plague Order, 1895 (No. 5288); Pleuro-Pneumonia Order, 1895 (No. 5289); Foot-and-Mouth Disease Order, 1895 (No. 5290); Sheep Pox Order, 1895 (No. 5291); Animals (Transit and General) Order, 1895 (No. 5305); Water Supply on Railways Order, 1895 (No. 5306); Channel Islands Animals Order, 1896 (No. 5511); Foreign Animals (Quarantine) Order, 1896 (No. 5513); Markets

(*f*) Detail of procedure in all such cases is fully set out in the handbook issued, free of charge, by the Board of Agriculture and Fisheries. Police are at once required to notify to Board the existence of disease. Telegrams can be sent free of charge. Information has also to be sent to the veterinary inspector and to clerk to local authority.

(*g*) See note (*k*), p. 161, *post*.

and Fairs (Swine Fever) Order, 1896 (No. 5518); Rabies Order, 1897 (*h*) (No. 5578); Sheep Scab Order, 1898 (No. 5847); Exportation of Horses Order, 1898 (No. 5886); Anthrax Order, 1899 (No. 5905); Swine Fever Order, 1901 (No. 6339); Swine Fever (Infected Areas) Order, 1902 (No. 6526); Markets and Sales Order, 1903 (No. 6714); Foreign Animals Order, 1903 (No. 6719); Swine Fever (Regulation of Movement) Order, 1903 (No. 6734); Foreign Animals (Amendment) Order, 1903 (No. 3) (No. 6744); Swine Fever (Temp.) Order, 1903 (No. 6758); Markets and Sales Order, 1904 (No. 6796); Animals (Transit and General) Amendment Order, 1904 (No. 6805); Epizootic Lymphangitis Order, 1904 (No. 6818). Local Orders are also in force relating to various ports and towns. As to Orders relating to dogs, see title, "DOGS," *post*.

Onus probandi.—Where the owner or person in charge of an animal is charged with an offence against this Act relative to disease or to any illness of the animal, he shall be presumed to have known of the existence of the disease or illness, unless and until he shows to the satisfaction of the court that he had not knowledge thereof, and could not with reasonable diligence have obtained that knowledge (s. 57).

Power to exclude strangers.—Owner or servant may affix to infected premises a notice forbidding persons to enter therein without permission (s. 13).

POLICE.

Notice to police—isolation, etc.—(1) Every person having in his possession or under his charge an animal affected with disease shall (a) as far as practicable, keep that animal separate from animals not so affected; and (b) with all practicable speed give notice of the fact of the animal being so affected to a constable of the police force for the police area wherein the animal so affected is.

(2) The constable to whom notice is given shall forthwith give information thereof to such person or authority as the Board of Agriculture by general order direct.

(3) The Board may make such orders as they think fit for prescribing and regulating the notice to be given to or by any person or authority in case of any particular disease or in case of the illness of an animal, and for supplementing or varying for those purposes any of the provisions of this section (Diseases of Animals Act, 1894, s. 4).

(*h*) As to rabies and Orders relating to the Importation of Dogs, see title, "DOGS," *post*.

(Section 43 of Act of 1894.)

Duties of constables.—(1) The police force of each police area shall (*i*) execute and enforce the Act and every Order of the Board.

(2) *Apprehension.*—Where a person is seen and found committing or is reasonably suspected of being engaged in committing an offence against this Act, *a constable may without warrant stop and detain him*; and if his name and address are not known to the constable, and such person fails to give them to the satisfaction of the constable, the constable may without warrant *apprehend* him; and the constable may, whether so stopping or detaining or apprehending the person or not, *stop, detain, and examine any animal*, vehicle, boat, or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back, or into any place or district wherefrom or whereout it was unlawfully removed, and execute and enforce that requisition.

(3) If any person obstructs or impedes, or assists to obstruct or impede, a constable or other officer in the execution of this Act or of an Order of the Board, or of a regulation of a local authority, the constable or officer may without warrant apprehend the offender.

(4) A person apprehended under this section shall be taken with all practicable speed before a justice, and shall not be detained without a warrant longer than is necessary; and all enactments relating to the release of persons, on recognisances taken by an officer of police, or a constable, shall apply in the case of a person apprehended under this section.

(5) The foregoing provisions of this section respecting a constable extend and apply to any person called by a constable to his assistance.

(6) *Reports.*—A constable shall forthwith make a report in writing to his superior officer of every case in which he stops any person, animal, vehicle, boat, or thing under this section, and of his proceedings consequent thereon.

(7) *Saving clause.*—Nothing in this section shall take away or abridge any power or authority that a constable would have had if this section had not been enacted (s. 43).

Transit—Food and Water.

Section 23 of the Act requires that proper provision of food and water shall be made at places where animals are shipped and

(*i*) It is usual for the local authority to appoint special officers of police within each district or division as inspectors under Act, and veterinary inspectors are also appointed.

unshipped ; also that a proper supply of water shall be provided at railway stations. No animal to remain without water for longer period than twenty-four hours.

Railway lines running through infected areas are exempted from provisions of Act applicable to such places. Police are not infrequently required to act as inspectors of cattle trucks used on railways, and to see that the same are properly cleansed and limewashed.

Sheep in transit.—The exposure to cold of recently shorn sheep in transit is an offence. See Order 5305 (1895), and s. 22 of Act.

Customs Acts—Unlawful landing and shipping.—(1) If any person lands or ships or attempts to land or ship an animal or thing in contravention of the Act (1894), or orders thereunder, he shall be liable under and according to the Customs Acts to the penalties imposed on persons importing or exporting or attempting to import or export goods, the importation or exportation whereof is prohibited by or under the Customs Acts, without prejudice to any proceedings against him under this Act for an offence against this Act. (2) The animal or thing in respect whereof the offence is committed shall be forfeited under and according to the Customs Acts in like manner as goods, the importation whereof is prohibited by or under the Customs Acts (s. 56).

FAIRS AND MARKETS.

Regulations may be made under the Act regulating the holding of fairs, markets, etc., in infected areas (*k*). See also Market and Sales Orders, 1903 (6714) and 1904 (6796).

VARIOUS MATTERS.

The Diseases of Animals Act, 1896, amends s. 24 of the Act of 1894, as regards the slaughter of foreign animals at port of landing, and repeals s. 26.

The Diseases of Animals Act, 1903, amends the Act of 1894 (s. 22), in relation to sheep scab ; it provides for the compulsory adoption of remedies in case of scab. Local authorities are required to provide facilities for sheep-dipping.

Carcases.—*Re* burial of carcases (*l*) washed ashore, and recovery of expenses incurred, see s. 46 of Act.

(*k*) Bringing diseased animals into a public market is a common law nuisance (*R.* v. *Vantandillo* (1815), 4 M. & S. 73), or bringing a glandered horse to a fair (*R.* v. *Henson* (1852), 1 Dears. 24).

(*l*) To dig up carcases buried by order of Board of Agriculture and Fisheries is an offence (s. 53), and in some cases larceny (*R.* v. *Edwards* (1877), 41 J. P. 212).

Interpretation clause.—"Cattle" means bulls, cows, oxen, heifers and calves.

"Animals" means (except where otherwise expressed) cattle, sheep and goats, and all other ruminating animals and swine (s. 59).

Dairies, Cowsheds, and Milkshops.

The Local Government Board may make general or special (*m*) orders for registration of dairymen, etc. (*n*), for inspection of cattle in dairies, and for sanitary arrangements of premises. For securing the cleanliness of milk, etc. (*o*), and for protecting it from infection or contamination, and for authorising local authorities to make regulations for these purposes (Contagious Diseases (Animals) Act, 1878, s. 34. The Act is repealed *except* s. 34).

Dogs.

As to provisions relating to dogs, see title "Dogs," *post*.

The Importation of Dogs Order, 1901 (6296), consolidates and amends the Order of 1897 and amending orders.

Dogs affected with rabies may be slaughtered.

Symptoms of Diseases in Animals which may be readily detected by the Unpractised Eye (*p*).

Horses—*Glanders.*—A yellowish-white discharge of a sticky, tenacious character comes from the nostril, usually from one only and most frequently the left. A hard swelling between the jaws on the side of the discharge about the size of a walnut. There is a cough and general unhealthy appearance. On looking into the nostrils, small holes or ulcers may be seen. The discharge from the nostrils in glanders does not smell badly as is generally supposed.

Farcy.—Several small enlargements may be seen up the legs, in a nearly straight line, or along the hollow of the neck, or about the breast. These enlargements burst. They discharge a little blood-coloured matter, and look red. They increase in number, and are always in a line with each other. They are known as farcy buds. The animal has a general

(*m*) See Order of June 15th, 1885 (3267); Amending Order, November 1st, 1886; and Amending Order, 1899.

(*n*) The Queen's Bench Division held that a farmer who kept cows for the supply of his family and for amusement, and who occasionally allowed his neighbours and a dairyman to have a few quarts of milk, was not a trader or cowkeeper (*Southwell* v. *Lewis* (1880), 45 J. P. 206).

(*o*) The Infectious Disease (Prevention) Act, 1890 (53 & 54 Vict. c. 34), contains regulations as to inspection of dairies, and power to prohibit supply of milk after the adoption of that Act by the local authority.

(*p*) From notes by Mr. H. Oliver, F.R.C.V.S., President of the British National Veterinary Association.

unhealthy appearance, and staring coat. The disease is sometimes accompanied with a discharge from the nose, etc., as in glanders.

The Epizootic Lymphangitis Order of 1904 (No. 6818), treats of an epidemic influenza prevalent amongst horses.

Cattle—*Cattle plague.*—This disease is of a virulent character, and cannot be decided on by an unqualified person. There are no special symptoms which would enable an ordinary observer to distinguish it from other diseases.

Pleuro-pneumonia.—An animal suffering from this disease usually separates itself from the rest of the herd, early in the morning or at night, when the air is cold or foggy, returning to the herd in apparent health in the middle of the day. Subsequently the breathing quickens, and the animal becomes feverish and shows signs of pain, with frequent coughing.

Foot-and-mouth disease.—A discharge of saliva (slobber) from the mouth, with a peculiar smack of the lips, is almost sufficient to detect this disease. The animal frequently kicks out one heel as if trying to get rid of some offensive matter. On examining the mouth, large white spots may be seen on the lips and tongue (*q*).

Anthrax is an infectious disease of cattle and sheep. The strongest measures are used to stamp out this disease. The bodies of animals affected have to be burned—not buried (Anthrax Order, 1899, No. 5905). The symptoms vary according as the disease runs its course as a general or localised affection, while death is usually rapid, or sudden. When the malady is general, constituting what is designated splenic apoplexy or anthrax fever in the local form marked by the formation of carbuncles before general infection occurs, it is more protracted. In the apoplectic form dissolution may take place so quickly (in a few minutes), that there is no time to afford relief. An apparently robust animal is suddenly struck down whilst grazing or travelling, and rises no more. In some cases there may be a rally, but a second attack ensues.

Persons who handle diseased animals or their productions as flesh, skin, wool or hair, often die of anthrax. The disease is transmittable to every living creature including mankind.

Sheep—*Small-pox.*—Sheep attacked with this disease are feverish, sore, and apparently in pain. On examining the inside of the thighs and fore legs where there is no wool, red patches and pustules will be found similar to small-pox in man.

Scab in sheep.—Sheep affected with this disease, if watched when grazing, will be seen to continually turn round and bite at the sides or back, and rub against any post or rail. A closer inspection shows the wool to be loose and torn, while portions of wool will probably be found entangled in sheep's teeth, and the skin would be scabby, dry, and unhealthy. If the affected part is rubbed, the animal gives evident signs of pleasure.

Foot-and-mouth disease.—This disease does not often materially affect the mouth of sheep, but they are exceedingly lame: the feet become hot and painful, breaking out between the claws and on the coronet, running a

(*q*) *Foot-and-mouth disease* affects pigs very much in the same way as sheep; they become very lame.

thin liquid, and soon degenerating into a bad form of ordinary foot rot, with which disease this is easily confounded.

Pigs—*Swine fever.*—This disease, commonly called the "purples," "red soldier," etc., is distinguishable by the red or purple appearance of the skin, apparent just before, and still more so, after death. These appearances are more particularly noticeable on the belly and those parts of the body where the skin is thin, especially the ears. In dark coloured pigs the change of colour is not seen, but eruptions are usually found on the inside of the thighs; there will be loss of appetite, a general tucked-up appearance, either constipation or diarrhœa, and a cough.

APPRENTICES.

The jurisdiction of justices is confined by the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), to apprentices bound without premium or with premium under £25, or those bound under Acts relating to the relief of the poor.

A master cannot dismiss an apprentice for misconduct unless the indentures contain a stipulation to that effect (*r*).

A dispute about wages will not justify an apprentice leaving his service, nor will personal chastisement, but reasonable ground for believing bodily harm will be inflicted may probably justify leaving the service (*Halliwell* v. *Counsell* (1878), 38 L. T. 176). Counsel in the case referred to contended that there is no authority establishing that a master may chastise his apprentice. A master is bound to provide medical attendance for an apprentice residing with him but not for a servant (*R.* v. *Smith* (1837), 8 C. & P. 153).

Neglect.—Any master who neglects to provide (being liable to do so) for any apprentice necessary food, clothing, etc., is liable to a fine of £20, or imprisonment for six months (Employers and Workmen Act, 1875, c. 90, ss. 6, 10).

By 38 & 39 Vict. c. 86, s. 6, masters are liable to a fine of £20 or imprisonment for six months for neglecting to provide for apprentice food, clothing, medical aid, or lodgings, whereby the health of the apprentice is or is likely to be seriously or permanently injured.

Any master or mistress who neglects to provide (being liable to do so) for any apprentice or servant necessary food, clothing, etc., or does or causes to be done any bodily harm to such apprentice or servant, so that his or her health is permanently injured or life endangered, is guilty of a misdemeanor, and is liable to five years' penal servitude. See 24 & 25 Vict. c. 100, s. 26, APPENDIX, *post*.

(*r*) *Phillips* v. *Clift* (1859), 23 J. P. 120; but see also *Learoyd* v. *Brooke*, [1891] 1 Q. B. 431; 55 J. P. 265.

Sea service, fishery, etc.—Under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 109, the master of a foreign-going ship before carrying an apprentice to sea is to cause him to appear before a superintendent or authorities appointed under the Act. Section 380 of Act contains special provisions regarding issue of warrant for apprehension of any seaman or apprentice (to sea fishery) charged with desertion, absence, disobedience, breach of duty, or unlawful combination.

Parish apprentices—neglect, ill-usage.—Under the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 12, any master neglecting to perform terms or conditions of indenture is liable to penalty of £20. Two justices may impose fines on master for ill-usage (Parish Officers Act, 1793).

As to workmen and servants, see titles "EMPLOYERS AND WORKMEN" and "SERVANTS," *post.*

ARMY ACT.

(44 & 45 VICT. c. 58.)

The above general statute was passed in 1881 for the discipline and regulation of the army, and was a great improvement on the practice of repeating every year a separate Act. It was intended that the Act (which contains 193 sections), when once passed, should stand as a model or principal Act, and that the legislature should during each succeeding year pass an Army (Annual) Act (*s*) incorporating and continuing the principal Act, adding such corrections and alterations as might be from time to time necessary. The provisions of the Act which principally *concern the police* are those which relate to "billeting" and "deserters" (*t*). The Act also contains provisions relative to—

Attestation of recruits by justices (s. 80);

Maintenance by soldier of wife and children, or any child of which he may be proved to be the father (s. 145);

Buying or receiving from a soldier any military clothing or decorations (s. 156).

Attestation.—Any person offering to enlist is to be supplied with a notice (in the prescribed form) as to requirements, and is to be taken before a justice, who shall ascertain whether he consent to enlist, and shall not proceed with the enlistment if he considers the recruit *under the influence of liquor.*

(*s*) The necessity of passing an annual Act arises from the circumstances that the votes must be passed each year for maintaining the army of the year.

(*t*) See titles "BILLETING" and "DESERTERS," *post.*

If he consents to be enlisted, the justice, *after cautioning him* (*u*), can receive his attestation on paper and administer oath of allegiance (s. 80).

The master of an apprentice "attested" may claim him under certain conditions if under twenty-one years of age (s. 96).

Children.—A soldier of the regular forces shall be liable to contribute towards the support of any child of which he may be proved to be the father, to the same extent as if he were not a soldier, but there can be no execution against his pay or arms (s. 145).

No procedure is valid against men under orders for foreign service.

Military clothing, etc.—Any person who, without lawful authority, buys or receives from a soldier any regimental necessaries, clothing, decorations, or stores, shall be liable to fine or imprisonment (s. 156). Any person "found" committing an offence against this section *may be apprehended*, and search warrant may issue if required.

Criminal procedure.—No officer or soldier is exempt from being proceeded against by the ordinary course of law when accused or convicted of any offence (*x*), except such an offence as is declared not to be a crime for the purpose of the provisions of the Army Act, 1881 (s. 162).

If an officer neglects or refuses an application to deliver over to the civil magistrate any officer or soldier under his command who is accused or convicted as aforesaid (s. 162), or wilfully obstructs, or neglects, or refuses to assist constables, etc., in apprehending any such officer or soldier, such officer shall, if convicted, be guilty of a misdemeanor (s. 162 (3)).

In apprehending soldiers for civil offences, in cases where they have to be taken from the barracks, or when on duty, notice must be given to the commanding officer.

Police cells.—Soldiers under arrest for *military* crime may, under certain circumstances, be temporarily committed to police cells by the military authority (Army Act, 1881, s. 132).

Civil court.—Attendance in a *civil* court is not to be considered as "duty under arms," and consequently officers and men must remove their caps when so attending (Order of Court, 1882).

Reserves.—The "reserve forces" shall mean the army and militia reserve, also militia, yeomanry, and volunteers.

(*u*) False answers on attestation render offender liable to three months imprisonment.

(*x*) "Crime" means felony, misdemeanor, or other offence punishable with fine or imprisonment.

The Reserve Forces Act, 1882 (*y*), consolidates the Acts relating to the reserve forces. Section 24 contains provisions regarding the service of notices on men belonging to the army or militia reserve.

The police were required, under former Act (1870), to serve notices on men of "reserve forces." This section is now repealed so far as relates to militia, but re-enacted with respect to *local* militia, the police being required to serve notices when desired.

A notice may be served through the post; evidence of such service shall be satisfactory evidence of service; notice may be served in certain cases by publication of same in prescribed manner; constables and overseers are required to comply with Act.

45 & 46 Vict. c. 49, s. 22, contains similar provisions as to service of notices on militiamen.

The publication of notice in the prescribed manner in every parish in the county or area to which the corps belongs shall be considered sufficient notice to every militiaman in corps.

Men of the reserve forces charged with offences under the Reserve Forces Act, 1882, cognizable both by civil and military courts, shall not be tried by a civil court without sanction of military authorities.

Soldiers and police.—The constabulary should always endeavour to maintain the most friendly feeling with the military stationed amongst them, whether regulars, militia, or volunteers, also with the sailors of the Royal Navy.

If soldiers are guilty of any direct breach of the law, they should be arrested like other offenders: if they are drunk but not riotous the police should inform the guard at the military barracks, or the regimental patrol, and request that they may be taken in charge.

If a quarrel takes place between soldiers in the public streets, a constable should be careful about interfering, unless life is in danger, or civilians are concerned, but a report should be at once sent to the military authorities, the constable remaining on the spot till assistance arrives.

The police should not converse with sentries on duty.

Canteens.—Section 174 relates to canteens, which are exempted from provisions of ordinary statutory law in several respects (*z*).

(*y*) 45 & 46 Vict. c. 48.

(*z*) See "Licensing Laws," *post*.

The Act of 1889 (s. 7) contains provisions regarding recreation rooms, music, dancing, plays, etc.

ARMY RESERVE.

See title "RESERVES," p. 166, *ante*.

ARREST.

See under CONSTABLES, Chap. IV., p. 94, *ante*.

ARSENIC ACT.

(14 & 15 VICT. c. 13.)

The Arsenic Act, 1851, regulates the sale of arsenic with a view to preventing the commission of crime :

Section 1 enacts that every person who shall sell arsenic shall forthwith enter in a book in the form set forth in Schedule a statement of such sale.

SCHEDULE.

Day of Sale.	Name and Surname of Purchaser.	Purchaser's Place of Abode.	Condition or Occupation.	Quantity of Arsenic Sold.	Purpose for which Required.

The entry shall be signed by the person making the sale, and shall also be signed by the purchaser, unless such purchaser be unable to write, in which case the person making the entry shall add to the particulars the words "cannot write" (*a*).

Section 2 prohibits the sale of arsenic to any person who is unknown to the person selling the arsenic, unless the sale be made in the presence of a witness, etc. Arsenic cannot be sold to persons under age.

Soot.—Section 3 of Act contains provisions regarding quantity which may be sold as an admixture of soot with arsenic, etc.

Penalty for infringement of Act, £20.

The Pharmacy Act does not affect the Arsenic Act.

(*a*) Where a witness attends, the signature of the witness is required.

ARSON.

"Arson" is the malicious and wilful setting fire to any building (*b*).

The term does not strictly comprise cases of setting fire to things in or against any building, or to crops, stacks, mines, ships, etc.

The statutory provisions relating to the crime (which is not triable at sessions) are contained in APPENDIX, *post*. Maximum punishment: Penal servitude for life, or imprisonment, two years.

"Malice."—The act must be done unlawfully and maliciously, but the malice need not necessarily be against the owner of the property burned. If A. has a malicious intent to burn the house of B. (or to commit any other felony), and without intending it, burn the house of C., he is guilty of arson. If the act is proved to have been done *wilfully* it may be inferred to have been done "maliciously," until the contrary be proved.

Setting fire.—As to the "setting fire," there must be an actual burning of some part, however trifling, of the house, etc.

"Attempting" to set fire.—It is a felony to unlawfully and maliciously by any overt act attempt to set fire to any building, matter, or thing mentioned in s. 7 of the Malicious Damage Act, 1861 (*c*), under such circumstances that if the same were thereby set fire to the offender would be guilty of felony. Similarly, it is also felony to attempt to set fire to any matter or thing (crops, or stacks of hay, grain, pulse, straw, gorse, etc.) mentioned in ss. 16 and 17 of Malicious Damage Act, 1861 (*c*).

Attempt.—It is a sufficient "overt act" to render a person liable to be found guilty of "attempting" to set fire to a stack under this statute, if he goes to the stack with the intention of setting fire to it, and light a lucifer match for that purpose, but abandons the attempt because he finds that he is being watched.

ASSAULT.

An assault is an attempt by force or violence to do bodily injury to another. A "battery" is any injury whatsoever, be it ever so small, actually done to the person. Every battery includes an assault.

Threatening to strike a person, coupled with an ability to do so, will constitute an assault; but for a man to strike at another when at such a distance that he cannot possibly touch him is no assault.

(*b*) An unfinished house is a building within this section.
(*c*) See APPENDIX, *post*.

Where the person is struck, or even touched, the offence is a battery. An assault may be justified by showing that it was done in self-defence. Mere words do not amount to an assault. Insulting or abusive language, however gross, does not justify blows.

In order to constitute an assault it is not necessary that the party should receive an injury, but the act must have been done *with a hostile intention*. Merely placing the hand on another's shoulder to arrest his attention is not an assault (*Coward* v. *Baddeley* (1859), 28 L. J. Ex. 260).

It is not an assault for a parent to inflict moderate chastisement on his child, or a schoolmaster on his scholar (*Re Basingstoke School* (1877), 41 J. P. 118, and *Gardner* v. *Bygrove*, 53 J. P. 743).

Injuries given and received at prize fights are injuries to the public, and an indictment will lie against the parties concerned, and all persons aiding and abetting therein. See *R.* v. *Coney* (1882), 46 J. P. 388, 404.

A claim to trespass in pursuit of a fox will not justify an assault upon a person rightfully obstructing the hunt. See *Paul* v. *Summerhayes* (1878), L. R. 4 Q. B. D. 9; 42 J. P. 188.

As to liability of chairman of public meeting for assault by ordering disorderly persons to be removed, see *Lucas* v. *Mason* (1875), 39 J. P. 663.

As to assault by constable or doctor in examination of woman charged with concealment of birth, see title "Concealment of Birth," *post*.

Justices may order prosecution by indictment in cases of assault brought before them, if they find the assault or battery complained of to have been accompanied by any attempt to commit felony, or other circumstances which, in their opinion, make it a fit subject for such prosecution.

Justices cannot hear and determine cases of assault, etc., as to which any question shall arise as to title to land, tenements, etc., or as to any bankruptcy or any execution under process of any court of justice.

Statutory Provisions.

For statutory provisions see "Criminal Law Consolidation Acts," Appendix, *post*.

Sections 42 and 47 of Act relate to common assault, which is punishable summarily by fine (£5) or imprisonment, and punishable on indictment by imprisonment for one year.

Sections 36 to 40 relate to assaults on clergymen, magistrates, peace officers, seamen, and assaults to prevent the buying or selling of grain.

Section 43 deals with aggravated assaults on females and boys.

As to indecent assaults, see title "Women and Girls," *post*.

Assault by husband.—58 & 59 Vict. c. 39, s. 5 (1895) provides that if a husband is convicted of an aggravated assault upon his wife within the

terms of 24 & 25 Vict. c. 100, s. 43, the justices may, if satisfied that the future safety of the wife is in peril, order that she shall be no longer bound to cohabit with him, and such order has the effect of a decree of "judicial separation," on the ground of cruelty. The justices may order the husband to pay a weekly allowance to the wife, and may give her the legal custody of children under the age of sixteen years.

[Under the Divorce Act (*d*) (20 & 21 Vict. c. 85), s. 21, power is given to justices, in cases of desertion by the husband, to grant the wife an order protecting any money or property she may acquire by her own lawful industry, or become possessed of.]

Assaults on police officials, etc.—Persons assaulting police in the execution of their duty are punishable under various statutes. Under the Prevention of Crimes Act, 1871 (s. 12) they are liable to a fine of £20, or six months' imprisonment, or nine months for subsequent offence within two years.

[This section is (*e*) extended (with lessened penalties) to cases of resisting and obstructing police.]

Assaults on borough constables are punishable under the Municipal Corporations Act, 1882, s. 195. Penalty £5. Similar provisions protect constables appointed under the Town Police Clauses Act, 1847.

Assaults on special constables are punishable under 1 & 2 Will. 4, c. 41. The provisions of the section are extended to constables appointed under the County Police Acts (*f*).

The provisions of 3 & 4 Will. 4, c. 90 (s. 41) protect constables appointed under the General Watching Act.

As to assaults on police executing warrants, see note (*i*), p. 99, *ante*.

As to assaults on officers employed in the prevention of smuggling, see 44 Vict. c. 12, s. 12.

Assaults on county court bailiffs (*g*) are punishable under County Courts Act, 1888, s. 48.

WOUNDING.

Unlawfully and maliciously wounding, and the infliction of grievous bodily harm is treated of under ss. 11, 12, 18, 20 (24 & 25 Vict. c. 100). See APPENDIX. Wounding is of two kinds —*felonious* (s. 18) when there is an intent to murder, maim, etc. (*h*), and *unlawful* (s. 20) when there is no felonious intent.

To "wound" means to divide the surface of the body whether externally or internally, such as the inside of the mouth. If the

(*d*) DIVORCE. With divorce proceedings the police have nothing whatsoever to do, and should not make themselves the medium of inquiries or communication in divorce cases.

(*e*) See 48 & 49 Vict. c. 75.

(*f*) 2 & 3 Vict. c. 93, s. 8, and 3 & 4 Vict. c. 88, "additional constables."

(*g*) See *R.* v. *Briggs* (1883), 47 J. P. 615.

(*h*) Section 18 extends to three species of assault: (1) Wounding, (2) shooting, or (3) attempting to shoot.

Felonious wounding is not triable at quarter sessions.

skin be not broken there is no "wounding," but nevertheless "grievous bodily harm" may have been inflicted. There may be an assault occasioning "actual bodily harm" not amounting to unlawful wounding (s. 47).

ASSIZES.

See "COURT OF ASSIZES," p. 8, *ante*.

BAIL.

"Admitting to bail" consists in the delivery of a person to his sureties on their giving security for his appearance at the time and place of trial.

Bail may be allowed by a judge or a magistrate, or in certain cases by a police officer (*i*). To refuse or delay to bail any person bailable is an offence against the liberty of the subject.

Three elements are to be taken into consideration in considering the bail: (1) The gravity of the crime; (2) the weight of the evidence; and (3) the severity of the punishment with regard to the probability of the defendant's appearance at the trial.

The amount of bail is discretionary with the magistrate; but it is illegal to require "excessive" bail.

When allowed.—It is *optional* with a magistrate to accept bail in all felonies (save treason), and in the following misdemeanors: obtaining property by false pretences; receiving stolen property; perjury; concealment of birth; indecent exposure; riot; assaults on police officers; or any misdemeanor, the costs of which may be allowed out of the county rate.

In other misdemeanors it is *imperative* on the magistrates to admit to bail (11 & 12 Vict. c. 43, s. 23). Coroners can admit to bail persons charged with manslaughter (Coroners Act, 1887, s. 7). As to bail in the case of children, see Home Office Circular, January, 1889, APPENDIX, *post*.

Who may be bail.—A householder of sufficient property (*k*) may be bail. Infants, married women, or persons convicted of infamous crime cannot be bail. The usual number of bail is two. The sureties need not act as such for a longer time than they wish,

(*i*) Inspectors, or other officers in charge of police stations may admit to bail persons in custody for offences which are not of a "serious nature." See JUSTICES, p. 43, *ante*, also CONSTABLES, p. 109, *ante*.

(*k*) The Queen's Bench Division (*per* Lord Chief Justice) severely commented on the acceptance as bail of the solicitor of the accused (*R.* v. *Scott-Jervis*, November 18th, 1876).

but *may surrender accused* if they fear that he or she is about to abscond, or they may apply to the magistrate for a warrant to arrest accused, although in urgent cases a police officer may arrest without warrant.

THE BAIL ACT, 1898.

The Bail Act, 1898 (61 Vict. c. 7), amends the law with respect to bail. Whereas accused persons are sometimes kept in prison for a long time on account of their inability to find sureties, although there is no risk of their absconding, or other reason why they should not be bailed. Be it therefore enacted that "Where a justice has power, under s. 23 of the Indictable Offences Act, 1848, to admit to bail for appearance, he may dispense with sureties, if, in his opinion, the so dispensing will not tend to defeat the ends of justice" (s. 1).

BAKEHOUSES.

Offences in relation to bakehouses, sanitation, ventilation, lime-washing, etc., are enumerated in the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 99, 100.

Penalties for contravention of Act vary from 20*s.* to £10.

Underground premises shall not be used as a bakehouse unless they have been so used at the passing of the Act (August 17th, 1901), nor after January 1st, 1904, unless certified by the district council as suitable (s. 101).

The "procedure" is as in Factory and Workshop Act, 1901.

BANKRUPTS.

The Debtors Act, 1869 (32 & 33 Vict. c. 62) (*l*), abolished imprisonment for debt, except in default of obedience to an order of court, and provided for the punishment of fraudulent bankrupts. Under the Act, jurisdiction in offences under the bankruptcy laws is given to justices and recorders of sessions in certain cases, and under this Act and the Bankruptcy Act of 1883, bankrupts and debtors committing certain offences are guilty of felonies and misdemeanors.

A man may become bankrupt on a bankruptcy petition being presented to the court by one or more creditors (or by the debtor himself) for not less than £50.

A receiving order may be made against the debtor, and this may ultimately result in bankruptcy.

(*l*) Section 20 of Act repeals so much of the Quarter Sessions Act, 1842, as excludes offences under the bankruptcy laws from the jurisdiction of justices and recorders at sessions, and gives them jurisdiction over same.

A bankruptcy petition is granted on one or more "acts of bankruptcy"; also "act of bankruptcy" may show that the debtor is insolvent, or that he intends to defraud his creditors by suspending payment, departing from England, etc.

A debtor commits a criminal offence, and is termed a "Fraudulent Debtor" if, with intent to defraud his creditors, he commits certain acts which are indictable as *misdemeanors*, and enumerated in ss. 11 and 12 of the Debtors Act, 1869, and s. 31 of the Bankruptcy Act, 1883.

OFFENCES.

(DEBTORS ACT, 1869, SS. 11, 12.)

The chief offences are: Neglecting to make full discovery of estate to the administering trustee, or to deliver up property, books, papers, etc.; making any material omissions in a statement relating to affairs: failing to inform trustee of a false debt; destroying or falsifying papers or documents relating to affairs: attempting to account for any property by fictitious losses; concealing or removing property to the value of £10 within four months before the presentation of the petition; obtaining property on credit by false representations; pawning or disposing of property obtained on credit, or otherwise than in the ordinary way of trade: or making false representations in order to obtain consent of creditors to an agreement; or by s. 31 of the Bankruptcy Act of 1883, an undischarged bankrupt obtaining credit to the extent of £20 or upwards from any person without informing such person that he is an undischarged bankrupt.

Any person shall in each of the cases following be deemed guilty of a misdemeanor:

If in incurring a debt or liability he has obtained credit under false pretences or fraud, or if with intent to defraud creditors he has made any gift or transfer of property or any charge thereon, or transferred or otherwise disposed of property, or concealed or removed any property within two months before or after any unsatisfied judgment or order. A creditor fraudulently making a false claim commits a misdemeanor (Debtors Act, 1869, ss. 13, 14).

Arrest.—The court may cause a debtor to be arrested, and his books, papers, money, and goods to be seized, if, after service of notice or presentation of a petition, it appears that there is probable reason for believing that he is about to abscond (*m*); or if, after presentation of a petition, he is about to remove his goods to prevent possession being taken of them, or has concealed, or is about to conceal or destroy any of his goods, books, documents, or

(*m*) Any one who, after presentation of the petition, or four months before it, fraudulently absconds or attempts to abscond from England with any of his property to the value of £20, commits a felony. *Punishment*, two years' imprisonment (s. 12).

writings; or if, after service of a petition on him, or after a receiving order made against him, he removes goods above the value of £5, without the leave of the official receiver or trustee, or without good cause shown, fails to attend any examination ordered by the court (s. 25, Act of 1883).

Prosecutions.—The court exercising jurisdiction in bankruptcy, on receiving the opinion of a trustee that the debtor has been guilty of an offence under the Debtors Act, 1869, or the Bankruptcy Act, 1883, or on the representation of a creditor or member of the committee of inspection that there is reasonable ground to believe him so guilty, shall, if there is reasonable probability of the debtor being convicted, order the trustee to prosecute.

Making a false declaration or statement under the Bankruptcy Act is punishable under the Debtors Act, 1869 (32 & 33 Vict. c. 62, s. 14). See also 56 & 57 Vict. c. 54.

BARBED WIRE.

By the Barbed Wire Act, 1893 (56 & 57 Vict. c. 32), it is enacted "where there is on any land adjoining a highway within the county or district of a local authority, a fence made with barbed wire, or in or on which barbed wire has been placed, and such barbed wire is a nuisance to such highway, it shall be lawful for such local authority to serve notice in writing upon the occupier of such land requiring him within a time therein stated (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance." If the occupier fail to comply therewith the local authority may apply to a court of summary jurisdiction, and such court, if satisfied that the said barbed wire is a nuisance to such highway, may by summary order direct the occupier to abate the nuisance; and on his failure to do so, the local authority may do whatever may be necessary in execution of the order, and recover any expenses incurred.

"Barbed wire" means any wire with spikes or jagged projections. "Nuisance to a highway" as applied to barbed wire means barbed wire which may probably be injurious to persons or animals lawfully using such highway.

"Local authority" means any county council, any urban sanitary authority, or any sanitary authority in London, or any highway board.

BASTARDY.

The police are required to serve summonses and execute warrants.

The mother of a child not born in wedlock may apply to a justice of the division in which she resides for a summons against

the alleged father (*n*) within twelve months after the birth of the child or before its birth, or at any time after birth if the father has paid for maintenance before child is twelve months' old, or, if he has been absent from England, within twelve months after his return.

The justices can, by an affiliation order, require the putative father to pay a sum not exceeding five shillings a week until the child is thirteen years of age, or sixteen, if so ordered.

If the payments are not regularly made, a warrant may be issued, and the amount due and costs recovered (*o*) by distress; and in default of sufficient distress, any two justices may commit the father for a period not exceeding three calendar months (35 & 36 Vict. c. 65, s. 4).

Liability of soldiers.—Under the Army Act, 1881, s. 145, a soldier of the regular forces is liable to contribute to the maintenance of his wife and children, and also to maintain any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier, but execution in respect of any such liability shall not issue against his person, pay, necessaries, etc., nor will he be liable to be punished for the offence of deserting his wife and family, and leaving them chargeable to any place or union (*p*).

Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and a sum of money shall be handed to the commanding officer sufficient to enable the soldier to attend the hearing of the case and return to his quarters.

No process whatever under any Act or at common law in any proceeding in this section mentioned *shall be valid* against a soldier of the regular forces *if served after such soldier is under orders for service beyond the seas.*

(*n*) No order can be made against the alleged father unless the evidence of the mother be corroborated *in some material particular.* This may be by letters written by putative father or money paid (*R.* v. *Berry* (1859), 28 L. J. 86; 23 J. P. 86).

(*o*) A constable has no authority to receive the amount and discharge the defendant.

(*p*) Under sub-s. (2) a copy of any order, etc., made against a soldier is to be sent to the Secretary of State.

BETTING AND GAMING.

Betting.

(16 & 17 Vict. c. 119 (1853) ; 37 & 38 Vict. c. 15 (1874)).

(*As to* "Gaming," *see* p. 180.)

The Betting Act, 1853, referred to as the principal Act, was amended by the Betting Act of 1874, and both Acts are cited together as "The Betting Acts, 1853 and 1874."

The Acts of 1853 and 1874 prohibit any house, office, room, or other place being kept or used for the purpose of betting between persons resorting thereto (*q*), or for the purpose of any money or valuable thing being received by the owner, occupier, servant, or other person, on any event or contingency of or relating to any race, fight, game, sport, or exercise.

Every house, office, etc., so used is declared to be a "common nuisance," and shall be deemed to be a common gaming house, and within the meaning of the Gaming Act, 1845 (8 & 9 Vict. c. 109).

Penalty for keeping or using such house or place, £100 ; for receiving deposits on bets, £50 ; or in both cases imprisonment. Money deposited is recoverable by civil action. See 57 J. P. 119.

While the law does not sanction betting, it nowhere declares it to be criminal. All it does is to condemn betting as carried on in certain specified conditions (*per* Russell, L.C.J. : *R.* v. *Brown*, [1895] 1 Q. B. 119 ; 59 J. P. 485).

Place.—The word "place" has given rise to a large amount of controversy and legislation.

A temporary structure on a racecourse was held to be a place (*Shaw* v. *Morley* (1868), 37 L. J. 105) ; so also was a large

(*q*) The "resorting" to a house for the purpose of betting must be actual and physical ; sending letters and telegrams is not "resorting thereto." The Act does not apply to betting between members of a *bonâ fide* club not established for the purpose of betting, although betting is one of the main features of the institution and persons use the club premises for the purpose of betting with each other (*Downes* v. *Johnson*, [1895] 2 Q. B. 203 ; 59 J. P. 487). See also *Oldham* v. *Ramsden* (1875), 39 J. P. 58. Sir H. Poland, K.C., has advised that it is illegal to allow baccarat to be habitually played even in a *bonâ fide* club (33 Sol. J. 748).

As to bookmaker "resorting" to house (licensed premises) for purpose of betting, see *Belton* v. *Bushy*, [1899] 2 Q. B. 380 ; 63 J. P. 709 ; also *Tremans* v. *Hodgkinson*, [1903] 1 K. B. 468 ; 67 J. P. 82 ; Treat. 169.

The habitual use of a house by a bookmaker for the purpose of *paying* money won over bets is not an offence within s. 3 of Act of 1853 (*Bradford* v. *Dawson* (1896), 41 Sol. J. 160).

umbrella stuck in the ground and used as a tent (*Bows* v. *Fenwick* (1874), 43 L. J. 107). See also *Brown* v. *Patch*, [1899] 1 Q. B. 892 ; 63 J. P. 421.

In 1896 a court specially formed of HAWKINS, J., and four other judges sat to hear the case of *Hawke* v. *Dunn*. The question raised was, Whether a professional betting man, who carried on his business at the Hurst Park race meeting in the one-pound ring in a place called Tattersall's enclosure, an open space surrounded by iron railing, and did not confine himself to any fixed spot for the purpose of his operations, but moved about within its limits, was guilty of an offence? The prosecution was promoted by the Anti-Gambling League through its secretary. The ruling of court was favourable to contention of league. A more authoritative exposition of the law was subsequently sought in the case of *Powell* v. *Kempton Park Racecourse Co.*, which reversed the position, the decision of the Court of Appeal overruling *Hawke* v. *Dunn* (*r*). BRUCE, J., held at Liverpool Assizes (December, 1896), that an undefined part of the public footpath at the corner of a street was not a place within the meaning of the Act.

Advertising.—Under s. 7 of the principal Act, it is an offence to exhibit placards or hand-bills, or otherwise advertise betting-houses. Penalty, £30, or two months' imprisonment : and by s. 3 of the Act of 1874 a similar penalty attaches in cases where any letter, circular, telegram, placard, hand-bill, card, or advertisement is sent, exhibited, or published, whereby—

(1) It is made to appear that any person will give information or advice with respect to any bet or wager, or will make on behalf of any other person any such bet or wager ; or

(2) With intent to induce any person to apply to any such betting house for information, etc. ; or

(3) Inviting any person to make or take any share in or in connection with any such bet or wager.

As to what is a "wager," see cases collected at 40 J. P. 227.

RAIDS BY POLICE.

Warrant.—Any justice on complaint on oath that there is reason to suspect any place to be used as a betting house, may issue a warrant to any constable to enter with assistance, and if

(*r*) *Re Powell* v. *Kempton Park Racecourse Co.*; the decision of the Court of Appeal, [1897] 2 Q. B. 242 ; 66 L. J. Q. B. 601 ; 61 J. P. 548 ; 77 L. T. 2, subsequently approved by the House of Lords, [1899] A. C. 163 ; 68 L. J. Q. B. 392 ; 63 J. P. 260 ; 80 L. T. 538, overruling *Hawke* v. *Dunn*, 1 Q. B. 579 ; 61 J. P. 292.

necessary with force, *and arrest and search any person therein* (*s*), and to seize all lists or other documents relating to racing or betting found therein.

The warrant may authorise search of premises licensed under the Licensing Acts.

Metropolitan Police.—The Commissioner of Metropolitan Police may, on report of a superintendent that he believes on good grounds that any house, office, room, or place within the metropolitan police district, is kept or used as a betting house or office, by order in writing authorise the superintendent and constables to enter any such place, and if necessary to force an entrance and arrest all persons, and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises.

Obstruction.—The fact that the entrance of a peace officer is *obstructed or delayed*, or that the place is found provided with means of gaming, or of concealing instruments of gaming (*t*), is evidence that the house is a common gaming house. Penalties are imposed for such obstruction, and for such other offences (17 & 18 Vict. c. 38).

Betting and Loans (Infants) Act, 1892.

The sending of any circular, notice, or advertisement to an infant inciting to borrow money is a misdemeanor, as is also the sending of circulars inciting to betting or wagering. If any such circular be sent to any person at any university, school, or place of education, the sender shall be deemed to have known that the person was an infant, unless he proves that he had reasonable grounds for believing otherwise (55 & 56 Vict. c. 4).

Punishment.—On indictment, three months' imprisonment, or fine £100, or both. Summary conviction, one month's imprisonment, or fine £20, or both (s. 1).

"Welshing"—Larceny by Trick.

A decision of the Queen's Bench whereby what is commonly known as "welshing" was declared to be felony was given in

(*s*) The powers of the police are not restricted under the words of the section ("all such persons found therein") to all such persons as are actually engaged in contravening the Act, or in aiding and abetting the contravention thereof (*Anderson* v. *Mayor of South Shields* (1882), 46 J. P. 825).

(*t*) Justices had ordered tickets, books, etc., seized under warrant to be destroyed as "instruments of gaming" (Gaming Act, 1845 (8 & 9 Vict. c. 109)), but the Queen's Bench Division ordered them to be given up (*R.* v. *Willcock* (1889), 54 J. P. 9; see 63 J. P. 39).

the case of *R.* v. *Buckmaster* (*u*) (1887), 20 Q. B. D. 182). The prisoner was at a race meeting offering to lay odds against different horses. He made a bet with the prosecutor laying odds against a particular horse, and the money for which the prosecutor backed the horse was deposited with the prisoner. The prosecutor admitted that he would have been satisfied if he did not receive back the same coins. The horse won, but the prisoner went away with the money ; and afterwards, when the prosecutor met him, he denied having made the bet. The prisoner was convicted of larceny and a case was reserved, the question being whether there was any evidence to be left to the jury :—*Held*, that as it appeared that the prosecutor parted with his money with the intention that in the event of the horse winning it should be repaid, while the prisoner obtained possession of the money fraudulently, never intending to repay it, in any event there was no contract by which the property in the money could pass, and therefore there was evidence of *larceny by trick* or fraud. The intention was to steal, not to contract. In delivering judgment, COLERIDGE, L.C.J., said : "The true view is that the property in the money was not intended to pass to the prisoner." See also *R.* v. *Sharp* (1887), 4 T. L. R. 152.

Gaming.

(8 & 9 Vict. c. 109 ; 17 & 18 Vict. c. 38.)

The Gaming Act, 1845 (8 & 9 Vict. c. 109), prohibits any house being used as a common gaming house. Penalty on owner or keeper, or banker, croupier, or other person conducting business of house, £100, or six months' imprisonment (s. 4).

A common gaming house is one kept or used for playing therein at any unlawful game, and where a bank is kept by one or more of the players exclusively of the others, or where the chances of any game played therein are not alike favourable to all the players, including the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet (s. 2).

A justice may issue a warrant to enter and search suspected house, and persons found therein may be arrested (s. 3).

It shall not be necessary, in support of any information, for gaming, etc., to prove that any person found playing at any game was playing for any money, wager, or stake (s. 5).

The Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), in the preamble states that where any cards, dice, balls, counters, tables, or other instruments of gaming shall be found in any house, room,

(*u*) *Re R.* v. *Buckmaster* (1887), 20 Q. B. D. 182. The offence with which a "welsher" can be charged is the larceny of the original stake, *not* of the stake *plus* the winnings.

or place suspected to be used as a common gaming house, it shall be evidence, until the contrary be made to appear, of such place being a common gaming house, although no play was actually going on in the presence of the superintendent or constable entering the same, the justices may direct all such tables and instruments of gaming to be destroyed.

Under s. 1 persons are liable to a penalty of £100 for obstructing entry of constables authorised to enter suspected houses, and under s. 2, obstructing the entry of the constables is to be an evidence of the house being a common gaming house.

Under s. 3, persons found in gaming house giving a false name or address, etc., may be fined £50.

The penalty under Act of 1854 for keeping a common gaming house, or assisting therein, or advancing money for the purpose of gaming, is £500.

A betting house is to be deemed a "gaming house."

The Park Club Case.

The following are the results of the judgments in *Jenks* v. *Turpin* (1884), 13 Q. B. D. 505; 53 L. J. 161; 49 J. P. 20; 50 L. T. 808, known as the "Park Club Case," and stated under 17 & 18 Vict. c. 38, s. 4:

A house that is used partly as a social club *bonâ fide*, and partly as a house for gaming, is none the less a house opened and kept for "the purpose of gaming."

The proprietor and committeemen of such a club are liable to conviction under the statute; but the players, though possibly liable to be indicted for unlawful gaming in a common gaming house, are not liable to summary conviction under the statute (17 & 18 Vict. c. 38).

To constitute "unlawful gaming" it is not necessary that the games played shall be *unlawful* games; it is enough that the play is carried on in a "common gaming house." It makes no difference that the use of the house is limited to the subscribers or members of the club, and that it is not open to the public; it is not a *public* but a *common* gaming house that is prohibited. "Baccarat" is a game of chance, and unlawful under the statute. (Judgment of Hawkins, J., June, 1884.)

In the same case, Smith, J., defined a "common gaming house" as a house kept or used for playing therein at any game of chance, or any mixed game of chance or skill, in which (1) a bank is kept by one or more of the players exclusively of the others, or (2) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play or bet. It is immaterial whether the bank is kept by the owner or occupier or keeper of the house, or by one of the players.

The Gaming Houses Act, 1854, enacts that any person being owner, occupier, or having use of any house, office, room or place,

who shall keep or use or permit the same to be opened, etc., for the purpose of common gaming, or any person having care or management of or advancing or furnishing money for the purpose of gaming there, shall be liable to a fine of £500, and liability to imprisonment with or without hard labour for twelve months.

ROULETTE, BACCARAT, ETC.

By 18 Geo. 2, c. 34, any person keeping any house, room, or place for playing, or permitting or suffering any person whatsoever within any such house, room, or place, to play at roulette (*x*) or at any game with cards or dice prohibited by law, is liable to a penalty of £50.

Baccarat was held to be an unlawful game in *Jenks* v. *Turpin*, see p. 181.

Cheating at play.—See "CHEATING," *post*.

GAMING IN PUBLIC PLACE.

The Vagrancy Act, 1824 (5 Geo. 4, c. 83), enacts that every person playing or betting in any street, road, highway, or other open or public place (*y*), at or with any table or instrument of gaming at any game or pretended game of chance, is to be deemed a rogue and vagabond (s. 4). This enactment is, however, repealed by the Statute Law Revision Act (No. 2), 1888 (51 & 52 Vict. c. 57), and the following clause of the Amendment Act, passed in 1873, is now operative.

By 36 & 37 Vict. c. 38, s. 3 (Amendment of Act), every person playing or gaming in any street, road, highway, or other place to which the public have access, at or with any instrument of gaming, or any coin, card, or token, may be apprehended and dealt with as a rogue and vagabond, or fined 40*s*. for a first offence, and £5 on second conviction.

Although this statute does not in words repeal the enactment contained in 5 Geo. 4, c. 83, on the subject of gaming, the substitution of this clause for the former enactment removes some of the difficulties experienced in carrying out the law as it originally stood, not only as to the place, but as to the means used in gaming. In *Watson* v. *Martin* (1865), 28 J. P. 775, playing at pitch and toss with halfpence was held not to be playing by way of wagering and gaming with any instrument of gaming. Under the present law playing with any coin, card, token, etc., will be an offence not

(*x*) In *Jenks* v. *Turpin* (1884), 13 Q. B. D. 505, HAWKINS, J., expressly alludes to roulette as an unlawful game.

(*y*) A railway carriage in transit is a public place (*Langrish* v. *Archer* (1882), L. R. 10 Q. B. 44; 52 L. J. 47; 47 L. T. 548; 47 J. P. 295).

only in any "open and public place," as to which questions frequently arose, but in any place to which the public are *permitted to have access*, as to which questions may still arise. See *Ex parte Freestone* (1856), 25 L. J. 121. The offence can only be committed in a place to which the *public* have or are permitted to have access (Stone's Justices' Manual, 37th edit. pp. 376, 1067). See Treat. 45 J. P. 481.

Gaming on Licensed Premises.

If any licensed person suffers any gaming or any unlawful game to be carried on on his premises, or opens, keeps, or uses, or suffers his house to be opened, kept, or used in contravention of 16 & 17 Vict. c. 119 (Act for the Suppression of Betting Houses), he is liable to a penalty of £10.

The unlawful games are ace of hearts, pharaoh, basset, hazard, passage, roulette, every game of dice except backgammon, and every game of cards which is not a game of mere skill, and, *per* Hawkins, J., "I am inclined to add any other mere game of chance." Bowling, coyting, cloysh, caylis, half-bowl and tennis seem to have been games of mere skill, and remained unlawful games until 1845, when the statute of 33 Hen. 8, c. 9, was repealed as to them and all other like games of skill by the Gaming Act, 1845 (8 & 9 Vict. c. 109) (*Jenks* v. *Turpin* (1884), 53 L. J. 161; 49 J. P. 20). Cockburn, L.C.J., was of opinion that unlawful gaming was not a mere question of amount or of the means of the parties to pay for the stakes (*Danford* v. *Taylor* (1869), 33 J. P. 227; see also *Dyson* v. *Mason* (1889), 58 L. J. 55; 53 J. P. 262); but Smith, J., held that any game which had a tendency to injure public morals was unlawful, and it was immaterial whether a game was played for counters of no value or for thousands of pounds, and the tribunal hearing the case would have to determine if it became necessary whether the stakes played for, the position of the parties, and the circumstances under which they were played for, had a tendency to injure public morals (*Jenks* v. *Turpin* (1884), *ante*).

Under 8 & 9 Vict. c. 109, alehouse keepers may without a licence, and beerhouse keepers and others with a licence, keep a billiard table, bagatelle board, or instrument of the like kind.

The statute repeals so much of 33 Hen. 8, c. 9, as prohibited any game of mere skill, as bowls, tennis, and the like.

But if those games or any other games as cards, dice, etc., be played for money or money's worth, or there be any betting on the game with the privity of the licensee, he will be guilty of an offence, as the section prohibits "*any* gaming."

Playing at dominoes is not gaming unless money or money's worth is staked (*R.* v. *Ashton* (1852), 22 L. J. 1).

Playing at skittles for beer, although the beer is not drunk on the skittle ground, is gaming (*Luff* v. *Leoper* (1872), 36 J. P. 773).

Playing a game of skill (puff and dart) in which each player contributed towards a prize to the winner, was held to be within this section (*Bew* v. *Harston* (1878), 42 J. P. 808; 47 L. J. 121).

In *Dyson* v. *Mason* (1889), 58 L. J. 55; 53 J. P. 262, it was decided that playing for money was gaming, even although the game be a game of skill and played for recreation and small stakes.

A licensee will be liable to conviction if he permits even his private friends to play at cards or other game for money or money's worth (*Patten* v. *Rymer* (1860), 29 L. J. 189). It is not necessary to prove actual knowledge of the licensed person or his manager, but it is enough to show gross negligence or wilful ignorance. As to constructive knowledge or something from which the justices could infer the landlord wilfully shut his eyes to what was going on, see *Bosley* v. *Davies* (1875), 45 L. J. 27; 39 J. P. 774; *Redgate* v. *Haynes* (1875), 45 L. J. 65; 40 J. P. 70; *Crabtree* v. *Hole* (1879), 43 J. P. 799.

H., a betting man, stood for some hours on a piece of waste ground adjoining the back premises of a public-house, and received from persons packets containing money for the purpose of backing horses running at Ascot races on that day. The landlord's daughter took the packets into the house at intervals, and when the betting was over H. went into the house and undid the packets and was found with a "paying-out sheet," used in connection with betting, but relating to racing on other days. H. was convicted under the Betting Act, 1853, for using the waste ground for the purposes of betting. The landlord knew the contents of the packets, but the Queen's Bench Division held he had succeeded in evading the Act (*Davis* v. *Stephenson* (1890), 24 Q. B. D. 529; 59 L. J. Q. B. 305; 54 J. P. 565).

In *Bradford* v. *Dawson* (1897), 61 J. P. 134, it was held that the mere payment of bets in a public-house, the bets having been made elsewhere, is not using the house for the purpose of betting within the meaning of s. 3 of the Betting Act, 1853 (16 & 17 Vict. c. 119).

BICYCLES.

The Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 85, repeals the powers of local authorities to make byelaws regulating the use of bicycles, tricycles, and other similar machines. These vehicles are declared to be "*carriages*" within the meaning of the Highway Acts, and the following *additional* regulations are to be observed by any person or persons riding or being upon any such carriage:

During the period between one hour after sunset and one hour before sunrise every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted as to afford adequate means of signalling the approach or position of the carriage.

Upon *overtaking* any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger being on or proceeding along the carriage way, every such person shall, within a reasonable distance from and *before passing such cart or passenger*, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage. Penalty 40*s*. (51 & 52 Vict. c. 41, s. 85).

As to non-liability of cyclist to *arrest* for offence (unlighted lamp), see *Hatton* v. *Treeby*, [1897] 2 Q. B. 452; 61 J. P. 586; 13 T. L. R. 556.

BIGAMY.

For statutory provisions, see 24 & 25 Vict. c. 100, s. 57, "Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland, or elsewhere . . ." commits the offence. *Felony:* Punishment, seven years' penal servitude or two years' imprisonment; not triable at sessions.

Upon an indictment for bigamy, the prosecutor must prove—(1) the two marriages (*z*). (2) the identity of the parties. (3) that the first wife (or husband) was alive at the time the second marriage was solemnised, and if absent for seven years that the prisoner knew of the fact that she (or he) was alive.

Bonâ fide belief on reasonable grounds in the death of the husband or wife before the second marriage is a good defence, although the seven years have not expired (*R.* v. *Tolson* (1889), 23 Q. B. D. 168; 58 L. J. 97; 54 J. P. 4 (*a*)).

The first wife is not a competent witness to prove any part of the case, either for or against her husband, but the second wife is.

The English courts have jurisdiction to try a British subject domiciled in England for bigamy where the bigamist's marriage takes place in a foreign country (*R.* v. *Earl Russell*, [1901] A. C. 446).

BILLETING.

Under the Army Act, 1881 (44 & 45 Vict. c. 58), the constabulary are required to act as billet masters, when so called upon by the military authorities (*b*).

The provisions of the Act regarding billeting apply also to the auxiliary forces when subject to military law (s. 181).

A person holding a military office or commission is not to be concerned as a justice or constable in billeting soldiers under his command (s. 120).

(*z*) It is immaterial "whether the second marriage shall have taken place in England, Ireland, or elsewhere."

As to the first marriage being valid without due publication of banns, see *R.* v. *Clarke* (1867), 16 L. T. 429. If the banns be published in a wrong name—both parties knowing this—for the purpose of a clandestine marriage, the marriage is void (*Wormald* v. *Neale* (1868), 19 L. T. 93).

(*a*) This case was reserved for consideration of all the judges.

(*b*) In the absence of constable, a justice may perform the duties (ss. 120, 190).

"(1) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route, and stated to require quarters . . . " (s. 103).

Liability to billet.—The provisions with respect to victualling houses shall extend—to all inns, hotels, livery stables, or ale houses, also to the sellers of wine by retail to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, or strong waters (*c*), or cider or metheglin by retail, and the occupier of a victualling house, or any such house as aforesaid, shall be subject to billets under this Act, and the premises of such occupier are in this Act included under the expression "victualling house."

An officer or soldier *shall not be billeted*—

(1) In any private house; (2) in any canteen; (3) nor on vintners of the city of London; (4) nor in house of distiller of brandy or strong water who does not permit tippling in such house; (5) nor in the house of any shopkeeper whose principal dealing is more in goods than in brandy or strong water, if shopkeeper does not permit tippling in house; (6) nor in a house of a person licensed only to sell beer or cider not to be consumed on premises; (7) nor in the house or residence of any foreign consul (s. 104).

All officers and soldiers of her Majesty's regular forces, all horses belonging to regular forces, and officers' horses for which forage is drawn, are entitled to billets (s. 105).

Accommodation.—The victualler shall furnish lodging and attendance for the officer; lodging, attendance, and food for the soldier; and stabling and forage for the horse, in accordance with Schedule to Act.

But the victualler may, subject to the approval of the constable providing the billets, provide *good and sufficient accommodation elsewhere* in the immediate neighbourhood. An innkeeper is liable to penalties for not receiving number of men billeted, even though in excess of numbers on billet list kept under s. 110 (*Sharratt* v. *Scotnay*, [1892] 2 Q. B. 479; 56 J. P. 680).

(*c*) This does not embrace an "off" beerhouse.

Payment.—The licensed victualler shall be paid for the accommodation provided before the departure of the officer or soldier, or once in every four days. Or if upon a sudden order to march the officer or soldier is unable to pay, he shall sign and transmit to the Secretary of State an account of the expenses (s. 106).

Debt, illusage, etc.—Application may be made to a court (*d*) of summary jurisdiction by keepers of victualling houses, or owners of carriages or horses, respecting payment of any sums due to them left unpaid by any officer or soldier, or respecting any ill-treatment, etc., received from any officer or soldier billeted on them (s. 119).

As to amount to be paid for food, lodgings, etc., see p. 189.

Billet lists.—The police authority for any place may cause annually a list to be made out of all keepers of victualling houses liable to billets under this Act, specifying the situation and character of each house, and the number of soldiers and horses which may be billeted there.

The police authority shall cause such list to be kept at some convenient place, open for inspection by persons interested, and any person who feels aggrieved by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court may order the list to be amended in such manner as the court may think just (s. 107).

List of carriages.—The police authority for any place may cause annually a list to be made out of all persons liable to furnish carriages and animals under this Act, with number and description of carriages and animals; and where a list is so made, any justice may by warrant require any constable having authority within such place to give from time to time on demand by an officer or non-commissioned officer under this Act orders to furnish carriages and animals, and such warrant shall be executed as if it were a special warrant issued in pursuance of this Act on such demand, and the orders shall specify the like particulars in such special warrant (s. 114).

Regulations as to grant of billets.—The following regulations shall be observed with respect to billeting (s. 108):

1. No more billets shall be ordered than there are officers, soldiers, and horses present to be billeted.
2. All billets when made out by the constable shall be *delivered into the hands* of the commanding officer, or non-commissioned officer who demanded billets, or officers authorised by commanding officer.

(*d*) And such court, if satisfied on oath, shall certify the same to a Secretary of State (s. 119).

3. If a victualler *feels aggrieved* owing to undue billeting, he may apply to a justice or court of summary jurisdiction, and the court or justice may, if it seems just, order removal elsewhere of persons or horses billeted.

4. A constable having authority in place mentioned in route may *billet* in adjoining county or elsewhere, if *within one mile* of place mentioned in the route, unless some constable having authority in such locality undertakes the duty.

5. The regulations with respect to billets contained in the *Second Schedule* to this Act shall be duly observed by the constable. See *infra*.

6. A justice may, on request of an officer or non-commissioned officer authorised to demand billets, *vary a route* by adding or omitting any place, and may *direct billets to be given above one mile* from the place mentioned in the route.

7. A justice may require a *constable to give an account* of the number of persons and horses billeted, and on whom and where billeted.

The Second Schedule to Act contains the following further regulations as to billets :

1. When troops are on the march they shall not be billeted *above one mile* from the place mentioned in route.

2. Care shall be taken that billets be made out *to the less distant victualling houses* if suitable, before billets be made out for those more distant.

3. If possible *each man and his horse* shall be billeted on the *same victualling house*.

4. And except in case of necessity *one soldier* shall be billeted where there are *two horses*, *two soldiers* where *four horses*, and so in proportion.

5. Except in case of necessity a soldier and his horse shall not be billeted at a greater distance apart *than* 100 *yards*.

6. When soldiers and horses are billeted on a *victualler who has no stables*, on written requisition of a commanding officer, the constable shall billet soldiers and horses, or horses only, on some other victualler who has stables, and the latter may recover a proper allowance from the owner of house relieved.

7. An officer may *allot the billets* among the troops as he thinks expedient, and may vary such allotment.

8. The commanding officer may, where practicable, require not less than *two men* to be billeted *in one house*.

By Second Schedule to Act the keeper of a victualling house is obliged, if required, to provide each soldier billeted on him with *one hot meal on each day*. The Schedule contains certain provisions regarding length of time the victualler is so liable, quantity of food to be provided, etc., viz., not exceeding 1¼lb. meat (uncooked), 1lb. bread, 1lb. potatoes, 2 pints small beer, vinegar, salt, and pepper; also quantity of forage for horse.

The Act of 1881 is amended by the Army (Annual) Act, 1902, and the Army (Annual) Act, 1904, s. 13.

The following is the maximum to be paid for food, lodging, etc. :

SCHEDULE.
(ARMY (ANNUAL) ACT, 1904.)

Accommodation to be provided.	Maximum price.
Lodging and attendance for soldier where hot meal provided	4*d.* per night.
Hot meal as specified in Part I. of Second Schedule to Army Act	1*s.* 3½*d.* each.
Breakfast as specified	1½*d.* each.
Where no hot meal furnished, lodging (*e*) and attendance, candles, vinegar, salt, and use of fire and necessary utensils for dressing and eating meat	4*d.* per day.
10 lbs. of oats, 12 lbs. of hay, and 8 lbs. of straw per day for each horse	1*s.* 9*d.* per day.
Lodging and attendance for officer	2*s.* per night.

Note.—An officer shall pay for his food.

Offences by police.—If a constable commits any of the offences following, he is liable to a fine varying from 40*s.* to £10 (s. 109) :

(1) Billeting any officer, soldier, or horse, on any person not liable to billets without consent of such person. (2) Receiving, etc., money to *exempt*, etc., any person from liability to billets. (3) Billeting on a person or premises without consent of such person any person or horse *not entitled* to be billeted. (4) Neglecting or *refusing*, after sufficient notice, to give *billets* demanded for a person or horse entitled.

Offences by licensed victuallers.—Victuallers committing any of the offences following are liable to fines varying from 40*s.* to £10 (s. 110) :

(1) Refusing or *neglecting to receive* a person or horse duly billeted on him. (2) Giving any *money, etc., to any constable* to relieve him of liability to billets. (3) Giving to any officer or soldier billeted upon him any money, etc., *in lieu of receiving* such officer or soldier.

Officers and soldiers are subject to penalties for various offences under s. 111 of the Act, as are other persons for forging routes, and making fraudulent claims (s. 121).

Sections 112 to 120 contain provisions for the issue of warrants by justices for the impressment of carriages, animals, and drivers for the conveyance of regimental baggage and stores on the march, the same to be paid for at proper rates. Various penalties are imposed for refusing or neglecting to obey warrants so issued.

(*e*) "Lodging" shall include the provision of a separate bed for each officer and soldier (Army (Annual) Act, 1904, s. 13).

BILLIARDS.

(8 & 9 VICT. c. 109.)

Justices can grant billiard licences at their licensing sessions (s. 10 of Act).

Power of entry.—It shall be lawful for any constable to enter into any house, room, or place where any public billiard table is kept as often as they shall think proper (s. 14).

Every person keeping any public billiard or bagatelle board, or instrument used in any game of like kind for public use, without being duly licensed so to do, and not holding a victualler's licence, is liable to a penalty of £10 a day, or one month's imprisonment with hard labour.

Under s. 12 the holder of a billiard licence—

Shall put and keep up the words "licensed for billiards" in some conspicuous place near door, and on outside of house ;

Shall not permit drunken or disorderly conduct in his house ;

Shall not allow the consumption of excisable liquors (*f*) in house by persons resorting thereto ;

Shall not knowingly suffer any unlawful game therein ;

Shall not allow persons of notoriously bad character to frequen premises ;

Shall not allow play to take place in house after one and before eight o'clock in the morning ; or on Sunday, Christmas Day, Good Friday, or public fast day or thanksgiving ;

Shall maintain good order and rule on the premises.

Under s. 13 licensed victuallers holding billiard licences commit an offence against the lessor of the licence if they allow persons (even though lodgers) to play at any table or bagatelle board at any time when such premises are closed for the sale of intoxicating liquors (*Ovenden* v. *Raymond* (1876), 40 J. P. 727).

BIRDS.

By the Wild Birds Protection Act, 1880 (*g*), any person (*h*) who between March 1st and August 1st [*or as varied in particular districts*] in any year wilfully shoots or attempts to shoot, or uses any boat for the purpose of shooting, *any wild bird*, or uses any

(*f*) Beer is not an excisable liquor within the meaning of this prohibition (*Jones* v. *Whittaker* (1870), 34 J. P. 663 ; 39 L. J. M. C. 139).

(*g*) In addition to the principal Act, Acts were passed in 1881, 1894, 1896, 1902, and 1904. See pp. 192—193, *post*.

(*h*) The Act does not prohibit owners or occupiers, or persons authorised by owners, killing or taking wild birds, *not included in the Schedule*, on their lands. [The list in the Schedule has been added to in nearly all counties.]

lime, trap, snare, net (*i*), etc., for the purpose of taking any wild bird, or offers for sale, or has in his possession after March 15th any wild bird recently killed or taken, may be summarily convicted.

Penalties for any wild bird *included in the Schedule*, £1. For any bird *not included in Schedule*, for the first offence the offender shall be *reprimanded* and discharged on payment of costs, and for every subsequent offence may be fined 5*s*. for each bird. Penalties attach to the giving of false name and address.

"Wild birds" shall be deemed to mean all wild birds.

Taking young birds from their nests is not an offence against the statute: but offenders might be dealt with for having such birds in possession. As to taking of eggs, see Acts of 1894 (*k*) and 1902, pp. 192, 193, and note p. 194.

The Secretary of State has power to vary the close time in different districts.

The birds named in the Schedule to the Act are—

American Quail	Kittiwake	Scout
Auk	Lapwing	Sealark
Avocet	Lark (Act of 1881)	Seamew
Bee-eater	Loon	Sea Parrot
Bittern	Mallard	Sea Swallow
Bonxil	Marrot	Shearwater
Colin	Merganser	Shelldrake
Cornish Chough	Murre	Shoveller
Coulter Neb	Night-hawk	Skua
Cuckoo	Nightingale	Smew
Curlew	Nightjar	Snipe
Diver	Oriole	Solan Goose
Dotterel	Owl	Spoonbill
Dunbird	Oxbird	Stint
Dunlin	Oyster-catcher	Stone Curlew
Eider Duck	Peewit	Stonehatch
Fern Owl	Petrel	Summer Snipe
Fulmar	Phalarope	Tarrock
Gannet	Plover	Teal
Goatsucker	Ploverspage	Tern
Godwit	Pockard	Thicknee
Goldfinch	Puffin	Tystey
Grebe	Purre	Whaup
Greenshank	Razorbill	Whimbrill
Guillemot	Redshank	Widgeon
Gull (except black-backed gull)	Reeve or Ruff	Wild Duck
	Roller	Willock
Hoopoe	Sanderling	Woodcock
Kingfisher	Sandpiper	Woodpecker.

(*i*) Trap, snare, net, etc., may be forfeited if court so order (Wild Birds Protection Act, 1896). Also bird or egg; see Act of 1902, p. 193.

(*k*) The Secretary of State may, on application of county council, by order prohibit the taking or destroying of eggs (s. 2). Penalty for each egg, £1 (s. 5).

The protection (under Schedule) may be extended to any wild bird, see pp. 193—195.

A special Act (51 & 52 Vict. c. 55) protects "sand grouse."

No penalty attaches to the possession of a wild bird lawfully killed or taken outside the place to which the Act extends.

The Wild Animals in Captivity Protection Act, 1900, makes cruelty to caged or captive birds an offence. See title "CRUELTY TO ANIMALS," *post*.

The county council is now the "local authority" in each county.

Note.—*Any* person may take up the duty of enforcing the Acts or Orders, and full information regarding same may be obtained on application to the Hon. Secretary, Birds' Protection Society, 3, Hanover Square, London, W. The society not infrequently acts as prosecutors on behalf of private informants.

Wild Birds Protection Acts, 1894, 1896, 1902, 1904.

ACT OF 1894.

Under this Act a Secretary of State may, on the representation of a county council (ss. 2, 3)—

(a) Prohibit by order the taking or destroying during specified times of wild birds' eggs either generally or of particular kinds;

(b) Apply the Act of 1880 to any species of wild birds not included in the Schedule of that Act.

Sections 4, 5, of the Act provide for the mode of publication of any order issued under the above sections, and prescribe penalties for the breach of such orders.

These Acts have been further amended and extended by the Wild Birds Protection Act, 1896 (59 & 60 Vict. c. 56).

Powers exercisable by county council may be exercised by council of county borough. See s. 3, Act of 1896.

ACT OF 1896.

Section 1: Secretary of State on application, under s. 8 of the Act of 1880, may extend the prohibition of taking or killing particular kinds of wild birds during the whole or any part of that period of the year to which the protection of wild birds under that Act does not extend, or the taking or killing of all wild birds in particular places during the whole or any part of the period (*l*).

(*l*) Under this clause the Home Secretary has prohibited Sunday bird catching in many districts, and protection has been extended to a number of birds throughout the whole year.

Section 3: Powers exercisable under Act of 1894 by county council may be exercised by council of county borough (*m*). Section 5: On conviction, in addition to penalty, trap, net, snare, or decoy bird may be forfeited.

Forfeitures, Penalties, etc.

In addition to forfeiture of trap, net, etc. (Act of 1896), the forfeiture of bird or bird's egg is secured by Act of 1902. See p. 194.

Eggs.—To take or destroy the eggs of any wild bird within area specified in Order (see Act of 1894), renders offenders liable to fine of £1 for every egg so taken or destroyed (Act of 1894, s. 5).

Forfeiture of Eggs.

WILD BIRDS PROTECTION ACT, 1902.

(2 Edw. 7, c. 6.)

"1. Where any person is convicted of an offence against the Wild Birds Protection Acts, 1880 to 1896, the court may, in addition to any penalty that may therein be imposed, order any wild bird, or wild bird's egg, in respect of which the offence has been committed, to be forfeited and disposed of as the court shall think fit."

This Act is to be construed with the Wild Birds Protection Acts of 1880, 1881, 1894, and 1896, and those Acts and this Act may be cited collectively as the Wild Birds Protection Acts, 1880 to 1902.

Pole Trap Prohibited.

WILD BIRDS PROTECTION ACT, 1904.

(4 Edw. 7, c. 4.)

"1. From and after the passing of this Act every person who, on any pole, tree, or cairn of stones or earth, shall affix, place, or set any spring, trap, gin, or other similar instrument calculated to cause bodily injury to any wild bird coming in contact therewith, and every person who shall knowingly permit or suffer or cause any such trap to be so affixed, placed, or set, shall be guilty of an offence. . . . ." Penalty, forty shillings; for a second or subsequent offence, five pounds.

This Act is to be construed with the Wild Birds Protection Acts, 1880 to 1902, and those Acts and this Act may be cited collectively as the Wild Birds Protection Acts, 1880 to 1904.

(*m*) This clause was inserted because some doubt had arisen as to whether county boroughs could incur expenses.

WILD BIRDS PROTECTION (ST. KILDA) ACT, 1904.

(4 EDW. 7, C. 10.)

An Act to extend the provisions of the Wild Birds Protection Acts to the Island of St. Kilda, excepting as regards certain Birds required for the support of the Inhabitants of the Island. [15th August 1904.]

"1. So much of section nine of the Wild Birds Protection Act, 1880, as provides that the operation of that Act shall not extend to the Island of St. Kilda is hereby repealed. Provided that the Schedule to the said Act of 1880 shall in the application of the Act to the Island of St. Kilda be read and construed as if the words fork-tailed petrel and St. Kilda's wren were inserted therein, and as if the words fulmar, gannet, guillemot, puffin and razorbill were deleted therefrom."

This Act is to be construed with the Wild Birds Protection Acts, 1880 to 1904.

SUMMARY OF THE WILD BIRDS PROTECTION ACTS.

ACT OF 1880 (PRINCIPAL ACT).

Shooting or snaring all wild birds during a particular period (*close time*) (*n*) is prohibited, and in the case of certain wild birds named in the *Schedule* special and fuller protection is granted.

Offering for sale, after March 15th, any wild bird recently killed or taken is prohibited.

Provision is made for extension or variation of close time.

ACT OF 1881.

Amends the law as to the offering for sale in respect of wild birds killed abroad, and adds lark to the Schedule of 1880 Act. See p. 191.

ACT OF 1894.

Enables orders to be made, on the application of county councils, to prohibit the taking or destroying of the *eggs* of certain wild birds, and enacts that further species of wild birds may be added to the Schedule.

ACT OF 1896.

Enables orders to be made to prohibit the taking or killing of any wild bird beyond the breeding period (or close time), and orders prohibiting the taking, etc., of all wild birds, in particular places, during the period to which the Act of 1880 does not extend;

(*n*) (*Game birds.*)—The "close time" for game birds is as follows: Partridge and pheasant, February 1st to September 1st and October 1st respectively; game and black game, December 10th to August 12th and August 20th respectively. Under s. 24 of Ground Game Act, 1880, any person not having the right to kill the game on the land, nor due permission, taking or destroying in the nest any game eggs or eggs of any swan, wild duck, teal, or widgeon, or knowingly having in his possession any eggs so taken:—Penalty, 5*s.* per egg.

Extends privileges to councils of county boroughs;
Gives power *to forfeit traps, nets, snares, decoy birds, etc.*, on conviction.

Act of 1902.

Gives power to the court *to forfeit* any wild bird or wild bird's egg in addition to any other penalty.

Act of 1904.

Prohibits the use of the pole trap. Penalty, 40*s.*; second offence. £5.

Wild Birds Protection (St. Kilda) Act, 1904.

Is an extension of the principal Act (1880) to the Island of St. Kilda protecting the fork-tailed petrel and the St. Kilda's wren.

BIRTHS AND DEATHS.

The Births and Deaths Registration Act, 1874, requires certain relatives and persons named to give information of every birth to the registrar within forty-two days and of every death within five days.

Penalties attach for burial of body of deceased child as if it were stillborn, or for burial of stillborn child except under prescribed conditions, or for making any false answer or declaration regarding birth, burial, etc. Summary penalty, £10. See also title "Dead Bodies," *post.*

If court consider that proceedings should be by indictment they may adjourn case for such proceedings to be taken.

BLASPHEMY.

The crime of blasphemy is a *misdemeanor* punishable at common law by fine or imprisonment, or both. The offence of blasphemy, or composing, printing, or publishing blasphemous libels is not triable at quarter sessions (6 & 7 Vict. c. 96).

Under 9 & 10 Will. 3, c. 32, any person educated in the Christian religion who shall by writing or speaking assert or maintain that there are more Gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures to be of Divine authority, shall, upon conviction on indictment, be subject to penalties, loss of office, etc. (*o*).

The disputes of learned men upon particular controverted points of religion are not punishable as blasphemy.

(*o*) Notwithstanding this doctrine, it is assumed that no prosecution could be sustained at the present day for calmly discussing or even calling in question the truth of Christianity, and that the offence of blasphemy consists in attacking it by ribaldry, profanity, or indecency, and not by legitimate argument. The case of *Foot and Others* ("Freethinker" publication), tried at the Central Criminal Court, March, 1883, and the case of *R.* v. *Ramsey* (1883), 48 L. T. 733, are illustrative.

BOARD OF AGRICULTURE AND FISHERIES.

(52 & 53 VICT. c. 31 (1889); 3 EDW. 7, c. 31 (1903).)

On the formation in 1889 of a Board of Agriculture, various powers of the Privy Council (*inter alia* those relating to "Contagious Diseases in Animals"), were transferred thereto, and in 1903, under 3 Edw. 7, c. 31 powers relating to the industry of fishing. The Board is now styled the "Board of Agriculture and Fisheries."

BODIES.

See "DEAD BODIES," *post*.

BRAWLING.

Disturbing congregations.—Under 1 Will. & M. c. 18, s. 15, it is an offence (penalty, £20) to maliciously or contemptuously come into any cathedral, parish church, or other congregation permitted by this Act, and disquiet or disturb the same.

Under 52 Geo. 3, c. 155, s. 12, it is an offence to wilfully, maliciously, or contemptuously, disturb or disquiet any meeting (*p*), assembly, or congregation of persons assembled for religious worship permitted by this Act. Penalty, 40*s*.

By 23 & 24 Vict. c. 32, ss. 2, 3, any person is liable to fine (£5) or imprisonment (two months) who shall be guilty of riotous, violent, or indecent behaviour in any cathedral or church, or in any chapel of any religious denomination (*q*), or in any place duly certified under 18 & 19 Vict. c. 81, whether during Divine service or at any other time, or in any churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet, or misuse any preacher duly authorised to preach therein, or any clergymen ministering or celebrating any sacrament or Divine service, rite, or office in any cathedral, church, chapel, or burial ground. The offender may be apprehended by a constable or churchwarden (s. 3).

The Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), provides for decency and order at burials. See title "BURIALS," *post*.

(*p*) The provisions of this Act are extended by the Religious Disabilities Act (9 & 10 Vict. c. 59), to all meetings, assemblies, etc., of persons lawfully assembled for religious worship.

(*q*) Any place actually used as the "chapel of any religious denomination," whether certified or not, will be within the protection of the statute (34 J. P. 12).

BREAD ACT.

(6 & 7 Will. 4, c. 37.)

Under this Act bakers and sellers of bread are liable to a penalty of 40*s.* for selling bread otherwise than by weight (*r*)—French or fancy bread (*s*) or rolls excepted—such weight to be avoirdupois weight; they are required to keep proper beams and scales (*t*) with proper weights or other sufficient balance in shop, and are liable if they use incorrect or false balance. Penalty, £5.

Sale from cart.—Bakers or their servants who carry out or deliver bread in or from any cart or other carriage (*u*) without having with them a correct beam and scales with proper weights or other sufficient balance, or who shall refuse to weigh in the presence of the purchaser any bread purchased or delivered, are liable to a penalty of £5.

Nothing in this section is to render a baker or seller of bread, or servant of such baker, liable for failing to weigh bread in the presence of the purchaser unless he is requested to do so (Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 32); or for weighing any bread conveyed or carried out in any cart or other carriage by means of any of the instruments for weighing included in the definition "weighing instrument" in s. 35 of the Act of 1889 (Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 11).

Bread made with admixture of any sort of grain other than wheat to be stamped with a large Roman letter—M.

Sections 8, 9 relate to adulteration of bread, meal, corn flour, etc. (*x*).

Warrant to search may be granted under s. 11 of Act.

All proceedings under this Act must be taken within forty-eight hours of offence (exclusive of Sunday), or within such reasonable time as the justice granting the summons may think fit.

Note.—*The statute applies to sale of bread out of London and beyond the bills of mortality, and ten miles from the Royal Exchange.*

(*r*) Selling without weighing *at the time* of sale is not made an offence. If a customer asks at a shop for bread by weight, the baker is bound to weigh the loaf, although not necessarily in the presence of the customer, but he is bound to weigh the bread some time or other before selling it, and is responsible if the weight is short (*R.* v. *Kennett* (1869), L. R. 4 Q. B. 565).

(*s*) "Fancy bread" must be something which to the eye is distinguishable from ordinary household bread (60 J. P. 425).

(*t*) The statute does not authorise a penalty to be imposed *summarily* for not fixing scales.

(*u*) This section does not apply to the delivery of bread from a basket.

(*x*) In a case tried at Bodmin Spring Quarter Sessions, 1884, a baker was sentenced to one month's imprisonment for selling bread adulterated with alum (28 Sol. J. 451).

BREAKING DOORS, FORCIBLE ENTRY, Etc.

See p. 96, *ante*.

BRIBERY.

This offence, which is a misdemeanor at common law, is made a misdemeanor by statute (*y*) (52 & 53 Vict. c. 69).

Corruption of or by public officer.—Bribery may be defined as the taking by, or giving to, a person in a judicial or public office (such as a police officer) of any fee, gift, reward, etc., to influence his behaviour in his office, or the taking or giving a reward for appointing another to a public position. An attempt to bribe, although unsuccessful, is also a misdemeanor.

Bribery at elections is dealt with under the Corrupt Practices Act, 1883.

Every person is guilty of misdemeanor who commits bribery, or uses undue influence at or in respect of any election to Parliament, or to any municipal office.

BURGLARY.

For statutory provisions relating to burglary, see 24 & 25 Vict. c. 96, s. 51, "Larceny Act," *post*.

The offence may be tried at quarter sessions, but the prisoner charged is to be committed for trial at assizes unless owing to special circumstances (difficulty or absence of gravity) the justices think best to commit to sessions (Burglary Act, 1896).

Maximum punishment.—Penal servitude for life, or imprisonment for two years.

Definition.—Burglary is the breaking and entering the dwelling-house of another in the night time (between 9 P.M. and 6 A.M.) with intent to commit some felony therein, whether such felonious intent be executed or not.

In this definition there are four things to be considered :

The time, viz., night time (*z*), between 9 P.M. and 6 A.M. See Larceny Act, 1861, s. 1, *post*.

(*y*) Public Bodies Corrupt Practices Act, 1889.

(*z*) Where the breaking and entering, etc., is in the daytime, the offence is housebreaking, not burglary.

Being found at night, armed with dangerous weapons, or with housebreaking implements, with intent to commit felony, is a misdemeanor. Door keys and pincers are implements of housebreaking (*R.* v. *Oldham* (1852), 21 L. J. 134).

The place.—A dwelling-house (*a*) that is a permanent building in which some person habitually sleeps.

The manner.—Both a breaking and entering are necessary. The breaking may be by unlocking the outer door or picking a lock, breaking or taking the glass out of a window, raising a trap door kept down by its own weight, or opening a window by putting up the sash, etc., but entering by an open window, or door, or by a hole in the roof, will not be a breaking, though the breaking an inner door, or unlocking it for the purpose of entering room, will be sufficient. The least degree of entry is sufficient: the introduction of the hand or any part of the person, *if with intent to commit felony*, or the introduction of any instrument or weapon, if used for the purpose of committing a felony. Obtaining an entry by trick or artifice, or by collusion with a servant or person in the house, is sufficient entry to constitute burglary.

The intent.—The breaking and entering must be with a felonious intent, that is, with a design to commit a robbery, murder, rape, or some other felony, whether actually perpetrated or not. Where the breaking is a breaking out of a dwelling-house in the night there must have been a previous entry with intent to commit a felony, or an actual commission of a felony in such dwelling-house. *An entry with intent to commit a misdemeanor or trespass will not be sufficient.*

As to steps to be taken in investigating cases of burglary, see CONSTABLES, *ante.*

BURIALS.

All burials under the Burial Laws Amendment Act of 1880, whether with or without a religious service, shall be conducted in a decent and orderly manner, and any person guilty of riotous or indecent behaviour shall be guilty of a misdemeanor.

Christian burial.—There appears to be no clear authority as to what is meant by "Christian burial." A mother was indicted for burying her child in a garden. BOWEN, J., held there was no evidence to go to the jury (Stafford Winter Assizes, 1879. 24 Sol. J. 245). See title "DEAD BODIES," *post.*

Cremation is not illegal unless carried out so as to amount to a public nuisance. It is a misdemeanor to destroy a body if there be reasonable grounds for an inquest. The Cremation Act, 1902, makes provision for the establishment of crematoria.

(*a*) Regarding breaking, entering, etc., shop, warehouse, buildings with curtilage, etc., see ss. 55, 56, of Larceny Act, 1861; also s. 57 as to sacrilege, viz., breaking and entering, etc., any church, chapel, or meeting-house.

BYELAWS.

The council of any borough may make byelaws for the good rule and government of the borough (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 23) (*b*).

A county council have, under the Local Government Act, 1888 (51 & 52 Vict. c. 41), similar powers with regard to counties.

Justices are bound to decide on any objection to the validity of a byelaw. RUSSELL OF KILLOWEN, L.C.J., laid down as a general rule that the courts were bound as far as possible to support byelaws issued by local authorities unless byelaws were *ultra vires* or unreasonable (*Walker* v. *Stretton* (1896), 60 J. P. 318). See also *Innes* v. *Newman* (Cambridge), [1894] 2 Q. B. 292 ; 58 J. P. 543 ; *Booth* v. *Howell* (St. Albans) (1889), 53 J. P. 678.

CANAL BOATS.

(40 & 41 VICT. C. 60.)

Local authorities are required to enforce the above Act and the Act of 1884 within their respective districts.

A boat used for conveyance of goods in inland navigation can only be used as a dwelling if it has been registered in accordance with Act. Inspectors are appointed to carry out the provisions of the Acts, and any person authorised by the registration or sanitary authority, or by a justice of the peace, may enter a boat on suspicion of contravention of Act, or that there is anybody on board suffering from infectious disorder. Penalties vary from 20*s*. to 40*s*.

A child on board a canal boat and its parents are, for purposes of Elementary Education Acts, to be deemed residents in the place to which the boat is registered as belonging.

Every registered canal boat is to be lettered, marked, and numbered on both sides or on the stern so as to be plainly visible from both sides of canal (40 & 41 Vict. c. 60, s. 3, and 47 & 48 Vict. c. 75, s. 7 (Act of 1884, which amends Act of 1877)).

CARBOLIC ACID.

By an Order of the Privy Council dated July 26th, 1900 (London Gazette, July 31st, 1900), carbolic acid (and certain preparations thereof) is declared a poison within the meaning of the Pharmacy Act, 1868 ; and persons selling same are subject to the rules and regulations pertaining to sale of poisons. See title "POISONS, SALE OF," *post*.

(*b*) See also Public Health Act, 1875, s. 187.

CHAFF-CUTTING MACHINES.

(60 & 61 Vict. c. 60.)

The feeding mouth or box of every chaff-cutting machine is to be provided with fittings to secure safety, so as to prevent the hand or arm of person feeding the machine from being drawn between the rollers. Penalty for contravention of Act, £5. Constable can, on instruction of officer not below grade of superintendent or inspector, enter on premises for purpose of inspecting machine.

CHALLENGE.

Duel.—It is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge, or to fight. If one person shall kill another under the provocation of charges against his character or conduct, be they ever so grievous, it will be murder in him and his second. Sending a challenge is an offence for which the Court of King's Bench will grant a criminal information. It is usual for the justices to grant a warrant against the parties, and bind them over to keep the peace. See Russell on Crimes, 6th ed., vol. i., p. 593.

CHEATING.

Cheating is an offence indictable as a *misdemeanor* under the common law, when the method of cheating or deceiving is such as people *by ordinary care* cannot guard against, as when false weights, etc., are used, but it is different when the cheat or deception is one against which common prudence might protect.

Cheating at play.—Any person who shall by any fraud, or unlawful device, or ill practice in playing at or with cards, dice, tables, or other games, or in bearing a part in the stakes, wager (*c*), or adventure, or in betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise win from any other person to himself, or any other, or others, any sum of money or valuable thing, *shall be deemed guilty of obtaining* such money or valuable thing from such other person *by a false pretence* with intent to cheat or defraud such person of the same (Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 17).

CHILDREN.

An "infant" in law is a person under the age of twenty-one (*d*).

Under the age of seven years a child cannot be guilty of felony, and is not criminally responsible. A child is not punishable unless

(*c*) See cases collected at 40 J. P. 227, as to "What is a Wager?"

(*d*) As to inciting infants to borrow money or bet or wager, see title "Betting and Gaming," *ante*, p. 177.

he is in the opinion of the court above seven years *and* of sufficient capacity to commit crime (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 10). Above seven and under fourteen, if it appears to the court and jury that a child could discern between good and evil, he may be convicted. After fourteen he is accountable (*e*).

Regarding punishment of "children" (under twelve) charged with indictable offences, and summary punishment of "young persons" between twelve and sixteen years of age, see Summary Jurisdiction Act, 1879, ss. 10—20.

As to youthful offenders, see title "YOUTHFUL OFFENDERS," *post*.

As to whipping child, see title "WHIPPING," *post*, also p. 208, as to Corporal Punishment.

Sale of liquor to children.—The selling of liquor to any person under the age of fourteen years, except in corked and sealed vessels (containing not less than one pint) is prohibited by the Intoxicating Liquor (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), known as the "Child Messengers Act." See "LICENSING LAWS," GENERAL SUBJECTS, *post*.

As to sale of *spirits* to young persons, see Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 7.

Various provisions relating to the care, custody, and education of children, are referred to under headings "INDUSTRIAL SCHOOLS," "REFORMATORIES," "EDUCATION," etc., see titles, *post*.

As to deserted children (*f*), see CONSTABLES, Chap. III., p. 82, *ante*.

Offences against children.—As to stealing, abandoning, etc., see 24 & 25 Vict. c. 100, ss. 27—56; also 31 & 32 Vict. c. 122, s. 37.

As to defilement of children, see title "WOMEN AND GIRLS."

Infanticide is the killing of an infant after it is born, see title "HOMICIDE," *post*.

The Infant Life Protection Act, 1897 (60 & 61 Vict. c. 57), s. 7, repeals the Act of 1872. Any person receiving, for hire or reward, more than one infant (under five years of age), to nurse or maintain apart from parents for longer than forty-eight hours shall forthwith notify the local authority, and further notice is to

(*e*) There is an exception in charges of rape, and assault with intent, etc.

(*f*) Special provision is made for the children of convicts (up to fourteen years of age). See title "PREVENTION OF CRIMES ACT, 1871," *post*.

be given on removal of infant. Notice must also be given where an infant is received for not more than £20 paid down, and in event of death coroner must be at once informed.

It is the duty of the local authority to fix the number of infants (under age of five) which may be retained in any dwelling.

Inspectors (male or female) can be appointed under Act.

Section 6 deals with removal to workhouse or other fit place of infant improperly kept. A constable may assist inspector in enforcing any order made.

Relatives, or guardians of infants, are exempted from the provisions of the Act.

"Local authority" shall mean (elsewhere than in city or county of London) the board of guardians.

Children's Dangerous Performances Act, 1879.—This Act (42 & 43 Vict. c. 34) prohibits the employment of children under fourteen years of age (*g*) in dangerous performances, whereby in the opinion of a court of summary jurisdiction the life or limbs of any such child shall be endangered. Persons so employing children are liable to a penalty of £10, as is also the parent or guardian aiding and abetting the same. Section 3 prescribes certain penalties and compensation for accident to any child.

Custody of Children Act, 1891.—This statute (54 Vict. c. 3) contains provisions enabling the courts to refuse parent in certain cases the custody of a child, or to require as a condition precedent to granting his request that he shall pay to any person who has brought up such child, or to the guardians of any union or parochial board, the whole or part of the costs incurred in bringing up the child.

Italian children.—A letter from the Home Office, dated August, 1877, requested co-operation of police in efforts to suppress the traffic in Italian children imported into this country by persons known by the name of *padroni*. The *padroni* send these children into the streets playing instruments, selling images, begging, etc.

In many cases the persons commit an offence against the Vagrancy Act, 1824, by procuring the child for begging purposes, or the child comes within the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 14.

Proceedings, however, can now generally be taken under the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15).

(*g*) The Dangerous Performances Act, 1897 (60 & 61 Vict. c. 52), extends the Act of 1879 to young persons; the age is extended in case of males to sixteen, and females to eighteen.

The consent in writing of chief officer of police is a condition precedent to prosecutions in certain cases.

EMPLOYMENT OF CHILDREN ACT, 1903.

(3 EDW. 7, C. 45.)

The Act of 1903 prohibits the employment of children between hours of 9 P.M. and 6 A.M. (*h*).

Children under eleven years of age shall not be employed in street trading, and no child shall be employed in any occupation likely to be injurious to life, limb, health, or education.

A child employed half time under Factory and Workshops Act, 1901, shall not be employed in any other occupation. No child shall be employed to lift or move anything so heavy as likely to cause injury.

A doctor's certificate which has been served by the local authority on employer shall be admissible as evidence. Matters of detail are largely left to the action of local authorities, who are empowered (ss. 1, 2, 4) to make byelaws for regulating the employment of children, prescribing—

(1) the age below which ;

(2) the hours between which ; and

(3) the number of hours beyond which employment is illegal.

The authority can also make byelaws regarding street trading by persons under sixteen (s. 2). For contravention of the Act (or any byelaw), the offender shall be liable to a fine of 20*s*., and for subsequent offence, £5. If a person under sixteen contravenes a byelaw as to street trading, he can be fined or sent to an industrial school, or the court may order offender to be committed to the charge and control of some fit person willing to undertake the same (s. 5).

Employers and their agents or workmen are liable to penalties (40*s*. to £5), should they employ a child in contravention of the Act or any byelaw made thereunder, as is also the parent or guardian if he has conduced to the commission of the offence by default or neglect.

If an employer satisfy the court that he used due diligence to comply with Act, and that some other person is culpable—the other person may be summarily convicted, and the employer exempted from fine (s. 6).

Proceedings under Act must be commenced within three months of commission of offence (s. 7).

Under s. 8, a justice can grant order to empower officer of local authority to enter place of employment. Penalty for obstructing officer, £20.

Section 9, as to employment in factories, mines, etc. (*i*), is not to apply to child above twelve, nor is it to apply to children in industrial or other schools.

Section 11, respecting employment of children in public entertainments, is repealed by the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), but is practically re-enacted in that Act (*j*).

(*h*) Unless where specially exempted by a byelaw of the local authority (s. 1).

(*i*) The Mines (Prohibition of Child Labour Underground) Act, 1900 (63 & 64 Vict. c. 21), prohibits the employment of boys under thirteen below ground.

(*j*) See s. 3 of Act referred to.

DEFINITIONS.

The expression "child" used in Act, means a person under the age of fourteen years.

"Employment" means employment on any labour exercised by way of trade or for the purposes of gain.

Street trading includes the hawking of newspapers, matches, flowers, and other articles, and playing, singing, or performing for profit, shoe-blacking, and any other like occupations carried on in streets or public places.

PREVENTION OF CRUELTY TO CHILDREN ACT, 1904.

(4 EDW. 7, C. 15.)

This statute repeals the Act of 1894, the provisions of which are practically re-enacted with some important amendments. It contains thirty-two sections, and may be divided into three parts :

(1) The treatment of children ;
(2) The employment of children ;
(3) The safety of child and arrest and prosecution of offender.

CRUELTY TO CHILDREN.

S. 1.—(1) "If any person over the age of sixteen years, who has the custody, charge or care of any child under the age of sixteen years, wilfully assaults, ill-treats, neglects, abandons or exposes such child, or causes or procures such child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering, or injury to its health (including injury to or loss of sight or hearing or limb or organ of the body and any mental derangement), that person shall be guilty of a misdemeanor ; . . . ."

PUNISHMENT.

On summary conviction offender shall be liable to a fine of £25, and in default or *in addition* thereto, imprisonment six months. If convicted *on indictment*, a fine of £100 and liability to imprisonment two years.

If offender be pecuniarily interested in death of child the fine may be increased to £200, or penal servitude awarded for five years.

An offence under this section (s. 1) of Act is referred to as an "offence of cruelty."

RESTRICTIONS ON EMPLOYMENT OF CHILDREN.

S. 2.—Any person who—

(a) causes or procures any child, being a boy under fourteen, or a girl under sixteen, to be in any street, premises, or place for the purpose of begging or receiving alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise ;

(b) or who causes or procures any child under ages above-mentioned to be in any street or licensed premises (other than premises licensed

for public entertainments) for the purpose of singing, playing, or performing, or being exhibited for profit, or offering anything for sale between the hours of 9 p.m. and 6 a.m. (*k*) ;

(c) or causes or procures any child under eleven years of age to be at any time in any street, public-house (*l*), circus, or place of public amusement for the purpose of doing any of the acts above referred to ;

(d) or causes or procures any child under the age of sixteen to be in any place for the purpose of being trained as an acrobat, contortionist, or circus performer, or for any performance which in its nature is dangerous,

that person shall, on summary conviction, be liable to a fine of £25 or in default or addition to imprisonment for three months.

The section contains a proviso exempting cases where the entertainment is for the benefit of any school or any charitable object if held elsewhere than on premises licensed for the sale of liquor ; if held on such premises a "special exemption" from justices must be obtained.

S. 3.—A petty sessional court may, however, grant a licence allowing any child over ten years of age—

(a) to take part in any entertainment, or in any circus or other place of public amusement as aforesaid ; or

(b) to be trained as aforesaid ; or

(c) for both purposes ;

if satisfied of the fitness of the child, and that proper provision has been made to secure health and kind treatment, seven days notice of intention to apply for licence has to be given by applicant to the chief officer of police for district, who can, if necessary, appear to oppose the grant. A copy of licence, if granted, has to be sent by licensee to the local authority.

Inspectors and others charged with the execution of the Employment of Children Act, 1903, shall have similar powers to inspectors appointed under the Factory and Workshop Act, 1901, s. 119, as to entry and inspection of factory or workshop.

An applicant for a licence under this section is required to give notice (seven days) to officer of police for district who may appear and oppose grant of licence.

Licensees are required to notify local authority as to grant of licence.

Nothing in ss. 2 or 3 is to affect the provisions of the Elementary Education Act, 1876.

ARREST OF OFFENDER AND PROVISION FOR SAFETY OF CHILDREN, ETC.

S. 4.—Any constable may take into custody, without warrant, any person who within his view commits an offence under this Act, or any of the offences mentioned in the First Schedule to Act, if the name and residence of such person are unknown to the constable and cannot be ascertained by him : and he can apprehend any person who has committed, or who he has reason to believe has committed, any "offence of cruelty" within the meaning of Act, or any of the offences mentioned in the First Schedule to

(*k*) Local authorities may by byelaw extend or restrict hours mentioned.
(*l*) But see s. 3 of Act as to "Licences."

Act, if he has reason to believe that such person will abscond, or if the name and address of such person are unknown to him.

Power to police to take bail provided such a course does not tend to defeat the ends of justice, or cause injury or danger to the child against whom an offence is alleged to have been committed.

DETENTION OF CHILD.

S. 5.—(1) "A constable, or any person authorised by a justice of the peace, may take to a place of safety any child in respect of whom an offence under paragraph (a) of section two of this Act has been committed, or in respect of whom an offence of cruelty within the meaning of this Act, or any of the offences mentioned in the First Schedule to this Act, has been, or there is reason to believe has been, committed. . . . ."

The section contains provisions as to safety of child and as to order of court as to care and detention of same.

Boards of guardians are to provide for the reception of children brought to a workhouse in pursuance of Act.

S. 6.—Where a person having the custody, charge, or care of a child (under sixteen) is convicted of committing in respect of such child an "offence of cruelty" within meaning of Act, or any of the offences mentioned in the First Schedule to Act; or is committed for trial for any such offence; or is bound over to keep the peace towards such child by any court, the court may, if satisfied on inquiry that it is expedient so to do, order that the child be taken out of the custody, charge, or care of the person so convicted, etc., and be committed to the custody of a relation of the child, or some other fit person (including any society or body corporate established for the reception of poor children or the prevention of cruelty to children).

A Secretary of State may authorise the emigration of any child, but, except with such authority, no person to whose custody a child is so committed shall procure its emigration.

S. 7.—As to maintenance of child when committed to custody of any person under order of court.

S. 8.—Religious persuasion of person to whom child is committed. The court shall, if possible, select a person of the same religious persuasion as that to which the child belongs.

S. 9.—As to interchange of powers under Industrial Schools Acts and this Act.

WARRANT.

S. 10.—If there is reasonable cause to suspect that a child has been or is being assaulted, ill-treated, or neglected in a manner likely to cause unnecessary suffering, or injury to health, or that any offence against Act has been or may be committed, justices may issue a warrant to search for such child and may order its detention in a place of safety until it can be brought before a court of summary jurisdiction.

Justices may by same warrant cause accused person to be apprehended.

One justice can act in any case of urgency.

Warrants are to be addressed to and executed by some superintendent, inspector, or other superior officer of police, who can be accompanied by complainant and medical practitioner as justices may direct.

The officer executing the warrant may make forcible entry on premises if need be.

HABITUAL DRUNKARDS.

S. 11.—As to power to deal with person convicted of offence of cruelty under Act who is an habitual drunkard (*m*), the court can, under certain conditions, in lieu of sentencing such person to imprisonment, make an order for his detention in a retreat, the licensee of which is willing to receive him.

EVIDENCE AND PROCEDURE.

S. 12.—As to evidence of accused person: such person shall be competent but not compellable to give evidence.

Ss. 13, 14. — As to power of justice to take deposition of child on oath in certain cases—cases of illness, etc., and as to admission of deposition in evidence.

S. 15.—As to reception of evidence of child of tender years. The section contains a proviso to effect that a person shall not be liable to be convicted on such evidence unless it be corroborated by some other material evidence in support thereof implicating the accused.

S. 16.—As to power to proceed with case in absence of child.

S. 17.—As to presumption of age of child.

S. 18.—As to mode of charging offences and limitation of time—proceedings must be commenced within six months of commission of offence.

Ss. 19, 20.—As to appeals, expenses of prosecution, etc.

S. 21.—Guardians may pay costs of proceedings.

SUPPLEMENTAL.

Ss. 22—33.—Supplemental provisions, definitions, etc.

Corporal punishment.—Under s. 28 it is provided that nothing in Act shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer punishment to such child.

SCHEDULES.

First Schedule—Offences referred to in Section 3.

Any offence under ss. 27, 55, or 56 of the Offences Against the Person Act, 1861, and any offence against a child (under sixteen) under ss. 5, 42, 43, 52, or 62 of that Act, or s. 11 of the Criminal Law Amendment Act, 1885.

Any offence under the Dangerous Performances Acts, 1879 and 1897.

Any other offence involving bodily injury to a child under the age of sixteen years.

Second Schedule—Enactments Repealed.

The Prevention of Cruelty to Children Act, 1894, and s. 4 (6) and s. 11 of the Employment of Children Act, 1903.

(*m*) See title "DRUNKENNESS," *post*.

YOUTHFUL OFFENDERS ACT, 1901.
(1 EDW. 7, C. 20.)

S. 1.—Where a child or young person (*u*) having been convicted of felony is discharged in accordance with s. 16 of S. J. Act, 1879, or First Offenders Act, 1887, or otherwise, or is punished with whipping only, the conviction shall not be regarded as a conviction of felony for the purposes of s. 15 of the Industrial Schools Act, 1866, or of any disqualification attaching to felony.

S. 2.—As to liability of parent or guardian in case of offence committed by child or young person where there is reason to believe that the parent or guardian has conduced to the commission of the alleged offence by wilful default or by neglect, the court may, on information, issue a summons against such parent or guardian charging him with contributing to the commission of the offence; and when any fine, damages, or costs are imposed upon the child or young person, and the court is satisfied that the parent or guardian has conduced to the commission of the offence, the court may order that the parent or guardian pay such fine, costs, etc., and give security for the good behaviour of the child.

S. 3.—As to limitation of costs.

S. 4.—A court of summary jurisdiction, on remanding or committing for trial any child or young person, may, instead of committing him to prison, remand or commit him into the custody of any fit person named in the commitment who is willing to receive him (due regard being had, where practicable, to the religious persuasion of the child). The court may exercise the like power pending any inquiry under s. 19 of Industrial Schools Act, 1866.

S. 5.—A court of assize or quarter sessions may exercise the like power of committing a child to an industrial school as may be exercised by justices under s. 15 of the Industrial Schools Act, 1866.

S. 6.—As to recovery of expenses of maintenance from parent or person legally liable.

S. 7.—As to appeals against orders for maintenance.

S. 8.—As to contributions by county councils.

S. 9.—As to contracts with school managers for weekly payments.

S. 10.—As to power to make rules under s. 29 of the S. J. Act, 1879.

S. 11.—In this Act the expressions "child," "young person," and "guardian" have respectively the same meanings as in the S. J. Act, 1879, except that the expression "guardian" includes the guardian of a young person as well as the guardian of a child.

Ss. 12 to 17 of Act apply to Scotland and Ireland.

S. 19.—Short title, citation, etc.

CHIMNEY SWEEPERS.

The chief officer of police shall enforce and put in execution the Chimney Sweepers and Chimney Regulation Acts, 1840 and 1864, without prejudice to the right of any other person to institute proceedings thereunder (38 & 39 Vict. c. 70, s. 21 (1875)).

(*u*) See s. 11, "DEFINITIONS."

Chimney Sweepers Regulation Acts.

ACTS OF 1840 AND 1864.

These Acts shall make it criminal for any person to compel or allow any person under the age of twenty-one to ascend or descend a chimney or enter a flue for the purpose of sweeping, cleaning, or coring the same, or for extinguishing fire. Penalty not exceeding £10, or in lieu, imprisonment not exceeding six months. No person under sixteen years of age is to be apprenticed to a chimney sweeper.

Under 3 & 4 Vict. c. 85, s. 6, the construction of chimneys built or rebuilt after August, 1840, of less size than fourteen inches by nine inches, or if circular, than twelve inches, subject to a penalty (*o*).

The Act of 1864 (27 & 28 Vict. c. 37) contains provisions prohibiting chimney sweeper employing any child under ten years of age in his business except on his own premises. The Act also prohibits a chimney sweeper taking with him into any house which he may enter for the purpose of sweeping chimneys, or extinguishing fires, etc., any person under sixteen years of age ; proof of age lies on the defendant (s. 1).

CHIMNEY SWEEPERS ACT, 1875.

The Act of 1875 (38 & 39 Vict. c. 70) requires that "every person carrying on the business of a chimney sweeper, and who employs (*p*) any journeyman, assistant, or apprentice, shall take out a certificate."

Certificates.—Certificates are issued by the chief officer of police in each police district (fee 2*s.* 6*d.*), and continue in force for one year. A register of certificates issued is to be kept. Certificates require to be indorsed if used in districts other than the one for which issued. Penalty for not having a certificate, 10*s.*

The chimney sweeper is required to produce his certificate and give his name and address on demand to any person for whom he acts, or to any justice, constable, or peace officer. Penalty 10*s.*

Anyone who lends, borrows, or alters a certificate is liable to a penalty of 20*s.* Anyone who makes a false representation regarding application for same is liable to a penalty of 40*s.*, and the like penalty, with or without imprisonment, for a second offence.

Holders of certificates convicted of offences against Acts of 1840 and 1864 forfeit certificates.

(*o*) As to implied repeal of this section by a later local Act, see *Hill* v. *Hall* (1876), 41 J. P. 183 ; 45 L. J. 153.

(*p*) A journeyman or assistant to a master is exempted from having a certificate provided he does not employ in chimney sweeping any other person as his paid assistant or apprentice (s. 9).

CHIMNEY SWEEPERS ACT, 1894.

Prohibits the knocking at doors, the ringing of bells, etc., or using any noisy instrument to annoyance of inhabitants for purpose of soliciting employment as chimney sweeper. Penalty, 10*s.* for first offence.

CLEANSING OF PERSONS ACT, 1897.

See "VERMINOUS PERSONS," *post.*

COIN.

The statutory provisions relating to coin are contained in the Coinage Offences Act, 1861 (24 & 25 Vict. c. 97). See synopsis of Act, p. 212, *post.* As to criminal investigation, see "CRIME AND CRIMINAL INVESTIGATION," p. 73, *ante.*

Coining, etc.—The making or counterfeiting any gold or silver coin intended to pass for any of the King's current coin, or the colouring, lightening, or impairing gold or silver coin with intent to defraud is felony, as is also the making or counterfeiting of copper coin, or possession of instruments intended to be used for same.

As to counterfeiting foreign coin, see ss. 18, 19, 21, 23, pp. 213, 214, *post.*

Defacing coin.—Defacing gold, silver, or copper coin, by stamping thereon any names or words, is a misdemeanor (s. 16).

Uttering.—The offence with which police most frequently have to deal with under Act is that of "uttering." It is a misdemeanor (s. 9) to knowingly tender or utter counterfeit gold or silver coin (*q*), as is also uttering and having in possession at the same time similar coin, or within ten days uttering another such piece (s. 10).

The possession of three or more pieces of counterfeit gold or silver coin with intent to utter is a misdemeanor (s. 11).

A second offence of uttering, after previous conviction, is Felony (s. 12).

The uttering, with intent to defraud, any *spurious coin*, viz., foreign coin, medals, pieces of metal, etc., as current coin, such coin, medals, etc., being of less value than the current coin for which it is tendered, is a misdemeanor (s. 13), and under 46 & 47 Vict. c. 45, s. 2, it is a misdemeanor to have in possession, or

(*q*) Evidence of subsequent uttering is admissible to prove guilty knowledge (*R.* v. *Foster* (1855), 24 L. J. 134). The fact that counterfeit coins were found in a prisoner's pocket, separately wrapped up, was held to be evidence of guilty knowledge (*R.* v. *Jarvis* (1855), 25 L. J. 30).

offer for sale, etc., any medal, cast, coin, etc., resembling in size, figure, and colour, any of the King's current gold or silver coin, or having thereon a device resembling any device on any of the King's coin.

Power of arrest.—Under s. 31 of the Coinage Act, any person whatsoever may apprehend any person *found committing* (*i.e.*, in the act of committing) any indictable offence against the Act, and deliver him to a constable or peace officer.

Section 27 of Act contains provisions regarding warrants.

COINAGE OFFENCES ACT, 1861.
(24 & 25 VICT. C. 99.)

COINAGE OFFENCES.

Section 1 defines the expressions "current gold or silver coin," "copper coin," "current coin," etc. The expression "false or counterfeit coin" includes any of the current coin which shall have been gilt, silvered, or in any manner altered, so as to resemble or pass for any current coin of a higher denomination.

Where the having any matter in the custody or possession of any person is mentioned in this Act, it shall include the knowingly and wilfully having it in the possession of any other person, and also the having it in any house, building, field, or other place.

S. 2.—**Counterfeiting.**—To falsely make or counterfeit any coin (*r*) resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, is Felony. P. S. for life, or I. 2 years (*s*).

S. 3. **Colouring.**—Colouring, washing, etc., counterfeit coin or any piece of metal, with intent to make it pass for current gold or silver coin, or colouring, filing, or otherwise altering genuine coin with intent to make it pass for current coin of a higher degree, is Felony. P. S. for life, or I. 2 years.

S. 4.—**Impairing.**—To impair, diminish, or lighten any of the current gold or silver coin, with intent that it shall pass for current gold or silver coin, is Felony. P. S. 14 years, or I. 2 years.

S. 5.—**Filings.**—To unlawfully and knowingly have in possession any filings or clippings, dust, etc., produced by diminishing any of the current gold or silver coin, is Felony. P. S. 7 years, or I. 2 years.

S. 6.—**Dealing in.**—Whosoever, without lawful authority or excuse (proof lies on accused), shall buy, sell, pay, or put off, any false or counterfeit coin resembling any current gold or silver coin, for a lower value than the same imports, shall be guilty of Felony. P. S. for life, or I. 2 years.

(*r*) Genuine coins fraudulently filed at the edges by which weight is considerably reduced are counterfeit (*R.* v. *Herman* (1879), 48 L. J. 166; 43 J. P. 398).

(*s*) P. S. denotes penal servitude, I. imprisonment.

S. 7.—**Importing.**—To knowingly and without lawful authority or excuse (proof lies on accused), import any counterfeit coin resembling current gold or silver coin, is Felony. P. S. for life, or I. 2 years.

S. 8.—**Exporting.**—The exporting of counterfeit coin is a misdemeanor. Punishment, I. 2 years.

S. 9.—**Uttering.**—To knowingly utter or put off any counterfeit coin resembling current gold or silver coin, is a Misdemeanor. Punishment, I. 1 year.

S. 10.—Whosoever shall tender, utter (*t*), or put off any counterfeit coin resembling current gold or silver coin, knowing the same to be false or counterfeit, and shall, at the time of such tendering, have in his possession any other piece of false or counterfeit coin resembling any current gold or silver coin, or shall, within the space of ten days knowingly tender, utter, or put off any other false or counterfeit coin, shall be guilty of a Misdemeanor. Punishment, I. 2 years.

S. 11.—Whosoever knowingly shall have in his possession three or more pieces of false or counterfeit coin resembling any of the current gold or silver coin, and with intent to utter or put them off, shall be guilty of a Misdemeanor. P. S. 5 years, or I. 2 years.

S. 12.—**Second offence felony.**—Anyone who after a previous conviction for any such misdemeanors as are mentioned in the last three preceding sections (9, 10, 11) of this Act, shall afterwards commit any of the misdemeanors in any of such sections mentioned, shall be guilty of Felony. P. S. for life, or I. 2 years.

S. 13. **Medals.**—Uttering with intent to defraud any spurious coin, *e.g.*, foreign coin, medals, pieces of metal, etc., as current gold and silver coin, such coin, medals, etc., being of less value than the current coin, is a Misdemeanor. Punishment, I. 1 year.

S. 14. **Copper coin.**—Whosoever shall falsely make or counterfeit any coin resembling any of the current copper coin; and whosoever, without lawful authority or excuse (proof lies on accused), shall knowingly make, buy, sell, or have in possession, any coining instrument or apparatus intended to make any copper coin; or shall buy, sell, put off, etc., any counterfeit coin resembling the current copper coin, at a lower rate than the same imports, shall be guilty of Felony. P. S. 7 years, or I. 2 years.

S. 15.—To knowingly utter, etc., any false or counterfeit copper coin, or to have in possession three or more pieces of such counterfeit coin, with intent to utter or put off the same, is a Misdemeanor. Punishment, I. 1 year.

S. 16. **Defacing.**—To deface the current gold, silver, or copper coin by stamping any names or words thereon, although the coin be not thereby lightened, is a Misdemeanor. Punishment, I. 1 year.

S. 17.—Any gold, silver, or copper coin defaced as in the last preceding section mentioned is not a legal tender; any person who tenders or puts off coin so defaced is liable on conviction before two justices to a fine of 40*s.* (Attorney-General permitting).

S. 18.—**Foreign coin.**—To make or counterfeit any foreign coin not being the Queen's current gold or silver coin, but resembling any gold or silver coin of any foreign prince, state or country, is Felony. P. S. 7 years, or I. 2 years.

(*t*) See note (*q*), p. 211.

S. 19.—To knowingly import or receive without lawful authority or excuse, any such false or counterfeit coin as mentioned in the last section, is Felony. P. S. 7 years, or I. 2 years.

S. 20.—To knowingly tender or utter a counterfeit coin meant to resemble a foreign gold or silver coin, is a Misdemeanor, punishable by imprisonment for six months for a first offence.

S. 21.—A second conviction for a like offence as in the last preceding section mentioned renders the offender liable to P. S. for life, or I. 2 years.

S. 22.—To falsely make or counterfeit any copper coin, etc., of any foreign prince, is a Misdemeanor. Punishment, I. 1 year, and for second offence, P. S. 7 years, or I. 2 years.

S. 23.—To have in possession without lawful authority or excuse, any greater number of pieces than five pieces of false or counterfeit foreign coin, or copper or other coin as in last section mentioned, renders possessor liable to a penalty of 10*s.* to 40*s.* for every piece so found, or in default imprisonment three months, or till penalty is paid.

S. 24.—**Coining tools.**—Knowingly and without lawful authority or excuse (proof lies on party accused) to make, buy, sell, or have in possession, any instrument used for coining, or any cutting engine, or other machine intended to be used for the false making or counterfeiting of coin, is Felony. P. S. for life, or I. 2 years.

S. 25.—To knowingly convey out of any of her Majesty's Mints without lawful authority or excuse (proof whereof lies on party accused) any puncheon, matrix, stamp, die, instrument, or engine used in coining, or any coin, bullion, or metal, is Felony. P. S. for life, or I. 2 years.

S. 26.—**Cutting coin.**—In any case where suspected coin is tendered, it may be cut, bent, etc., by any person to whom it is tendered, and if the coin be found to be counterfeit, the loss shall fall upon the person tendering the same, but if the same shall appear to be lawful coin, the person cutting, bending, or defacing the same is required to receive the same at the rate it was coined for.

S. 27.—**Warrant.**—As to power to search for and seize counterfeit coin, coining instrument, etc., warrant may issue on reasonable suspicion.

S. 28.—**Venue.**—Where any person shall utter counterfeit coin in one county or jurisdiction, and within ten days shall commit a like offence in any other county or jurisdiction, or where two or more persons acting in concert commit offence in different counties or jurisdictions, every such offender may be indicted and punished in any one of the jurisdictions.

S. 29.—**Proof.**—Upon trial of any person, proof that any coin is false or counterfeit need not necessarily be made by any moneyer or other officer of her Majesty's Mint, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness.

S. 30.—Every offence connected with falsely making or counterfeiting coin shall be deemed to be complete, although the coin shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected.

S. 31.—**Arrest.**—It shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence against the Act, and to convey or deliver him to a constable, or officer of police.

S. 32.—No conviction shall be quashed for want of form, or be removed by *certiorari* into any of her Majesty's superior courts of record.

S. 33.—**Trial.**—All actions and prosecutions shall be laid and tried in the county where the fact was committed, and be commenced within six months after fact committed. Notice in writing of such action to be given to the defendant.

Sections 34—36 relate to trial in Scotland, accessories, jurisdiction of Admiralty, etc.

S. 37.—**Previous convictions.**—In any indictment after a previous conviction for offence against Act (or Act relating to coin), the production of a certificate of the conviction for the previous offence, signed by the clerk of the court, shall, upon proof of the identity of the offender, be sufficient evidence of such conviction without proof of signature.

The proceedings shall be as follows: The offender shall first be arraigned for the subsequent offence, and if found guilty, or if he pleads guilty, he shall then and not before be asked whether he had been previously convicted; if he denies, the jury are then charged to inquire concerning such previous conviction, the point to be established being the identification of the accused with the person so convicted.

The only case in which evidence of a previous conviction may be given before the subsequent conviction is found is where the prisoner gives evidence of character.

Sections 38—43 relate to Fines and Sureties, Procedure and Costs.

COMMON LODGING-HOUSES.

(PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. C. 55, S. 76).)

Registered common lodging-houses (*u*) are houses registered by the local authority in which persons of the poorer classes (*x*) are received for short periods, inhabiting one common room. The keepers of such houses have to register their names and addresses with the local authority; they may be required to make reports, and have to submit to certain rules regarding cleansing and lime-washing the premises (s. 82). The authorised officers of the local authority have free access to any part of the house at any time (s. 85). Cases of fever or infectious disease have to be at once reported.

Under the Prevention of Crimes Acts, keepers of lodging-houses are liable to penalties for knowingly harbouring thieves or receiving stolen goods.

COMPOUNDING OFFENCES.

Any person who enters into an agreement not to prosecute a felony which he knows to have been committed, is guilty of the

(*u*) A definition of term "common lodging-house" is given in the Public Health Act (1875), s. 79. See title, *post*.

(*x*) Where beggars and vagrants are received, special rules apply.

offence of compounding a felony. See title, "RESTITUTION OF STOLEN PROPERTY," *post*, and definition "Felony," JUSTICES, Section III., *ante*.

If justices are once seized of the matter all right to compromise so as to oust their jurisdiction is at an end. They may convict on sufficient evidence of the offence notwithstanding any compromise.

CONCEALMENT OF BIRTH.

The offence is an indictable misdemeanor—maximum punishment, two years' imprisonment.

Section 60 of the Offences against the Person Act, 1861, enacts that:

"If any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child die before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanor, . . ."

On trial for murder the jury may, whilst acquitting of murder, find a verdict for this offence.

Where bodies of infants are found, the clothing or covering on the bodies should be carefully preserved and examined for any sign of identity. A medical examination should be made of the body to ascertain whether the child was born alive, and, if so, by what means it died.

The denial of the birth does not constitute the offence; *the woman* (or any person aiding her, who is equally guilty) *must have done some act constituting a "secret disposition of the body" after the child was dead.* The police should act with extreme caution in cases of concealment of birth, so as not to cruelly outrage the feelings of a person innocent of a criminal offence who may, however, in other respects be unfortunate (*y*).

(*y*) It is necessary to prove that the accused was delivered of a child. A dead body must be found and identified as the child of which the woman is alleged to have been delivered. It is also necessary to show that there was a "secret disposition" of the body.

It is important that the supposed mother should be examined by a doctor if a magistrate directs, *and that she consents*, but not otherwise. It would be a criminal assault to examine the woman's person without her consent. The state of the bedding, etc., may furnish evidence of the woman having given birth to a child without such personal examination. During her illness the woman should not be charged until a doctor certifies that it may be done with safety.

There is no authority to order surgical examination of a woman's person (*Agnew* v. *Jobson* (1877), 42 J. P. 424, 435).

The examination by a doctor of the person of a servant by direction of her mistress (who believed her to be *enciente*), was held not to be an assault in the absence of evidence of force, violence or coercion, the servant having at first remonstrated, but ultimately, on being told she must do so, submitted reluctantly to the examination (*Lutter* v. *Bradell and Others* (1881), 50 L. J. Q. B. 166; 45 J. P. 520).

The concealment must be from a desire to keep the world at large in ignorance of the birth, and not from a desire to escape individual anger (*R.* v. *Morris* (1847), 3 Cox, 489).

An endeavour to conceal the birth by leaving the child alive in a field, where it dies from exposure, is not covered by the section which relates to the secret disposition of the dead body of a child (*R.* v. *May* (1867), 31 J. P. 356).

As to "Infanticide," see title, "Homicide," *post.*

CONSPIRACY.

Conspiracy is where two or more persons combine together to execute some unlawful act for the purpose of injuring some third person or the public, and is a *misdemeanor* at common law, punishable by fine or imprisonment, or both. Conspiracy to murder is punishable by penal servitude.

To conspire to accuse any person falsely of any crime, or to do anything to obstruct or defeat the course of justice, is a misdemeanor. See also title, "Threats," *post.*

In cases of conspiracy the offenders may be tried in any place in which an act was done by any one of the conspirators in furtherance of the common design. Certain conspiracies are triable at sessions. See also title "Trade Unions," *post.*

CONVICTS.

The provisions relating to convicts on licence and persons subject to police supervision are contained in the Prevention of Crimes Acts, 1871 and 1879. See title, *post.* Convicts and supervisees are required to report themselves to the police within forty-eight hours of their arrival in any police district.

They have also to report any change of residence within the district, and give notice if they remove out of the district.

Males are bound to report themselves once a month to the police personally or in writing (*z*).

The Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), reduces the minimum for sentences of penal servitude from five to three years, repealing s. 2 of Act of 1864.

Section 2 empowers a constable to take into custody without a warrant any holder of a licence under the Penal Servitude Acts, or any person under police supervision, whom he reasonably suspects of having committed any offence, repealing s. 6 of Act of 1864, which gave a constable somewhat similar powers.

(*z*) Especial care should be taken by the police not to subject persons thus situated to annoyance by making their antecedents known.

The following are the conditions of licence :

(1) The holder shall preserve his licence, and produce it when called upon to do so by a magistrate or police officer.
(2) He shall abstain from any violation of the law.
(3) He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.
(4) He shall not lead an idle and dissolute life without visible means of obtaining an honest livelihood.

COPYRIGHT OF MUSIC.

See title, "MUSIC," *post*.

CORONERS.

The principal statutes relating to the office of coroner are 7 Will. 4 & 1 Vict. c. 68 ; 6 & 7 Vict. cc. 12 and 83 ; 7 & 8 Vict. c. 92 ; 23 & 24 Vict. c. 116 ; and the Municipal Corporations Act, 1882 ; also the Coroner's Act, 1890 (*a*).

Coroners are elected for life by vote of the freeholders.

Coroners are entitled to receive the assistance of the constabulary at all their inquests and protection in the execution of their office generally.

No person ought to be allowed to make a statement before a coroner except on oath. It is the duty of a coroner to receive evidence on oath alone, but he should caution a party who is giving evidence on oath, if he thinks his evidence may tend to criminate him, leaving it to his discretion to go on or not as he pleases.

Prisoners. —Where a prisoner is already in custody committed by a magistrate on a criminal charge, he can only be produced at an inquest as a witness by the authority of the Home Secretary obtained on affidavit.

In a letter from Home Office to the coroner for Middlesex, dated February, 1868, it was intimated that neither the Secretary of State nor any other authority has ever had power to order prisoners in custody on any charge to be brought before a coroner while holding an inquisition, except for the purposes of being examined as witnesses.

See also *In re Daniel Cooke* (1845), 9 J. P. 730, decision of COLERIDGE, J., as to power of Court of Queen's Bench to grant a writ of *habeas corpus* to bring before a coroner's jury a prisoner for the purpose of identification in case of "urgent necessity."

(*a*) The Act deals with the appointment of a deputy.

COUNTY COURTS.

To assault a bailiff of county courts in the execution of his duty, or to attempt to rescue any goods levied under process of court, renders offenders liable to fine of £5 (County Courts Act, 1888, s. 48).

CRABS.

See title "Fisheries," *post*.

CRIMINAL EVIDENCE ACT, 1898.

CRIMINAL EVIDENCE ACT, 1898.

(61 & 62 Vict. c. 36.)

S. 1.—"Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person."

The section contains provisions regarding examination and procedure—evidence of husband and wife—evidence as to character—cross-examination, etc. The person charged is not to be called as a witness except upon his own application, nor is his failure to give evidence to be made the subject of comment by the prosecution. He shall not be required to answer any question tending to show that he has committed any offence other (*b*) than that wherewith he is then charged, or is of bad character, *unless* such evidence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or that he has given or put in evidence of his own good character, or that the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or that he has given evidence against any other person charged with the same offence.

Nothing in Act shall affect the provisions of s. 18 of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.

S. 2.—The evidence of the person charged, if he be the only witness in case, shall be given immediately after the close of the evidence for the prosecution.

S. 3.—As to right of reply.

S. 4.—The wife or husband of a person charged with an offence under any enactment mentioned in the Schedule to Act (*c*) may be called as a witness without the consent of the person charged.

S. 5.—Application of Act to Scotland.

S. 6.—The Act shall apply to all criminal proceedings but shall not affect the Evidence Act, 1877. Saving clauses as regards courts martial, naval and military.

(*b*) As to cross-examination of prisoners as to previous convictions, see *R.* v. *Bridgewater* (1885), 48 J. P. 565.

(*c*) The enactments referred to in Schedule are the Criminal Law Amendment Act, 1885, the Offences against the Person Act, 1861 (ss. 48—55), the Married Women's Property Act, 1882 (ss. 12, 16), the Vagrancy Act,

CRIMINAL LAW AMENDMENT ACT, 1885.

See title "Women and Girls—Protection of," *post.*

CRIMINAL LAW CONSOLIDATION ACTS.

These Acts, passed in 1861, consolidated and amended the criminal law. They are six in number—24 & 25 Vict. cc. 94, 96—100.

Chapter 94 treats of Accessories; chapter 96 of Larceny; chapter 97, Malicious Injury to Property; chapter 98, Forgery; chapter 99, Coinage Offences; chapter 100, Offences against the Person. See the several titles referred to.

CRUELTY TO ANIMALS.

The constabulary are empowered to enforce the Acts passed for the more effectual prevention of cruelty to animals.

Powers and duties of police.—A constable upon view or upon the information of any other person who shall declare his name and address to him, may apprehend (*d*) an offender without a warrant and convey him to a justice. Any constable may take the vehicle or animal which is in the charge of the person apprehended, and deposit the same in safe custody as a security for any penalty, and for the expenses of keeping the same, for which purpose the justice may order a sale.

Prevention of Cruelty to Animals.

(12 & 13 Vict. c. 92 (1849).)

An offender against the Act is defined (s. 2) as any person who shall cruelly beat, ill-treat, overdrive, abuse, or torture, or cause or procure to be cruelly beaten, etc., any animal. Penalty £5, or, under certain circumstances, imprisonment (three months).

"Dishorning" of cattle.—In *Ford* v. *Wiley*, the Queen's Bench Division held that infliction of pain for a necessary purpose is not cruelty, but that unnecessary and unreasonable abuse of the animal is, so "dishorning" cattle, by cutting off the horns at the root for greater convenience in transit, etc., adds to the selling value, but it is *unjustifiable and unnecessary*, and is, therefore, a *cruel abuse* of the animal, and is illegal

1824 (the enactment punishing a man for neglecting to maintain or deserting his wife or any of his family), the Prevention of Cruelty to Children Act, 1894, and the Poor Law (Scotland) Act, 1845, s. 80.

(*d*) 11 & 12 Vict. c. 92, s. 13, but police should proceed by summons where offender is known.

(23 Q. B. D. 203; 53 J. P. 485). [The court in this case differed from the judgment in an earlier case (*Lewis* v. *Fermor*), "spaying" sows.]

The Scotch Courts, in *Todrick* v. *Wilson* (March, 1891), differed from *Ford* v. *Wiley*, holding that the operation of "dishorning" when performed with skill is not an offence under the Act.

The Irish Queen's Bench Division also refused to follow *Ford* v. *Wiley*, but *Ford* v. *Wiley* must still be followed by justices in England. Wanton cruelty to an animal, even if the person intend eventually to kill the animal, cannot be excused.

"Dubbing," or cutting the combs of cocks for exhibition purposes, is ill-treatment and torture, but it was held in their case also that pain inflicted to make the animal more serviceable for the use of man is not cruelty (*Murphy* v. *Manning* (1877), 41 J. P. 30).

The mere omission to slaughter an animal known to be in great pain and incurable is not within the section (s. 18), but turning such an animal into a field and leaving it to die might be (*Everitt* v. *Davies* (1878), 42 J. P. 248).

Shooting a dog trespassing in a garden intending to kill it, but leaving it to die in pain, is not within the Act (*Powell* v. *Knight* (1878), 42 J. P. 597). Guilty knowledge is an essential ingredient of offence.

"Animal" is defined as any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal.

By 17 & 18 Vict. c. 60 (Cruelty to Animals Act, 1854), s. 3, it is enacted that "domestic animal" shall mean any domestic animal, whether of the kind or species enumerated in clause 29, or of any other kind or species, and whether a quadruped or not.

A fighting cock is a domestic animal within this section, but young parrots newly imported are not domestic animals, nor is a dancing bear a domestic animal. Decoy birds are considered domestic animals (*Colam* v. *Paget* (1883), 48 J. P. 263).

A pinioned seagull kept for purposes of trade by a photographer was held not to be a domestic animal (*Yates* v. *Higgins* (1896), 60 J. P. 88). A wild animal in a cage is not by mere fact of its confinement a domestic animal (*Harper* v. *Marcks* (1894)). A fighting cock is a domestic animal (*Bridge* v. *Parsons* (1863), 32 L. J. 95). Young parrots newly imported are not domestic animals, nor are wild rabbits caught in nets and confined in boxes before being liberated and coursed (*Aplen* v. *Porritt* (1893), 57 J. P. 457).

Conveying animals in vehicles so as to subject them to unnecessary pain is an offence against the Act (s. 12); causing them unnecessary suffering on railway journey is an offence under Diseases of Animals Act, 1894 (p. 161).

Dogs cannot be used for draught. As to drugging animals, see title "Poison," *post*.

Baiting, etc.—Keeping or using any room, etc., for baiting or fighting any bull, bear, badger, dog, cock, or other kind of animal,

domestic or wild (*e*), or encouraging or assisting at the fighting or baiting, etc., are offences. Penalty £5 (s. 3).

Impounding of cattle.—Persons impounding animals are bound to provide them with sufficient food and water : and 17 & 18 Vict. c. 60, s. 1, provides for the recovery of costs by poundkeeper and for sale of animal in public market after the expiration of seven clear days from impounding, provided that *three days'* public printed notice has been given (s. 5).

Wild Animals in Captivity Protection Act, 1900.

(63 & 64 Vict. c. 33.)

S. 1.—The word "animal" in this Act means any bird, beast, fish, or reptile which is not included in the Cruelty to Animals Acts, 1849 and 1854.

S. 2.—Any person shall be guilty of an offence who, whilst an animal is in captivity or close confinement, or is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from such captivity or confinement, shall, by wantonly or unreasonably doing or omitting any act,—

cause or permit to be caused any unnecessary suffering to such animal ; or cruelly abuse, infuriate, tease, or terrify it, or permit it to be so treated.

S. 3.—Penalty, imprisonment three months, or fine £5.

S. 4. —This Act shall not apply to any act done or any omission in the course of destroying or preparing any animal for destruction as food for mankind nor to any act permitted by the Cruelty to Animals Act, 1876, nor to the hunting or coursing of any animal which has not been liberated in a mutilated or injured state in order to facilitate its capture or destruction.

The Injured Animals Act, 1894

Confers an important power on police. A constable can order the slaughter of any horse, mule, or ass which he may find so severely injured that it cannot without cruelty be led away. He shall, if the owner is absent or refuses to consent to the destruction of the animal, at once summon a duly registered veterinary surgeon, if any such resides within a reasonable distance ; and if it appears by the certificate of such surgeon that the animal is mortally injured, or so severely that it is cruelty to keep it alive, it shall be lawful for the constable, *without the consent* of the owner, to slaughter the animal or cause it to be slaughtered. Expenses can be recovered from the owner.

(*e*) Coursing rabbits with dogs in an inclosure from which they cannot escape is not baiting. "Baiting" is applicable to cases in which the animal pursued or attacked fights or resists.

SLAUGHTER HOUSES.

(26 Geo. 3, c. 71 ; 7 & 8 Vict. c. 87 ; 12 & 13 Vict. c. 92.)

Every person keeping or using any house for slaughtering horses or other cattle not intended for butchers' meat without a licence from the quarter sessions is liable to penalty (£5 a day).

Slaughtering horses.—Persons keeping slaughtering houses for slaughtering horses or cattle (not intended for butchers' meat) are required to immediately cut the hair from off the neck of the animal, and within three days kill it, supplying it in the meantime with food and water (12 & 13 Vict. c. 92, s. 8) (*f*). Any person using or employing any horse or cattle brought to be slaughtered is liable to penalties. Slaughterers are required to keep registers and affix name to premises.

Power of police.—Any constable may, at all reasonable times of the day, alone or with an inspector, enter and inspect all premises licensed for slaughtering, and inspect or take an account of any cattle therein.

VIVISECTION.

The performance of painful experiments on living animals (*g*) for scientific purposes by vivisection or otherwise is restricted by 39 & 40 Vict. c. 77. Penalty, £50 for first offence ; for second offence, £100, or three months' imprisonment.

Section 2 of Act permits experiments with anæsthetics on a dog or cat, provided a certificate be obtained ; also on a horse, ass, or mule with similar certificate.

Any public exhibition of painful experiment is illegal.

A search warrant may be granted, and persons refusing admission to constable or giving false name, etc., are liable to penalties.

[Prosecution against licensed house cannot be instituted without consent of Secretary of State.]

CUSTOMS LAWS.

The law relating to the Customs is consolidated by the Customs Law Consolidation Act, 1876 (39 & 40 Vict. c. 36).

Police are authorised (s. 203 of Act) upon reasonable suspicion to stop and examine any cart, waggon, etc., for the purpose of ascertaining whether any smuggled goods are contained therein.

Smuggled goods.—All goods liable to duty upon which the duties of customs have not been paid, or the importation of which is prohibited or

(*f*) Horses sent to kennels to slaughter (for hounds) come within section (*Colam* v. *Hall* (1871), 40 L. J. 100).

(*g*) The Act does not apply to invertebrate animals (s. 22).

restricted, and which are unshipped or in the course of removal, are liable to forfeiture, together with any goods found packed with or used in concealing them.

Offenders are liable to a penalty of £100, or treble the value of the goods. They may be arrested without a warrant.

The first-mentioned statute is amended by 42 & 43 Vict. c. 21 ; 44 Vict. c. 12 ; 50 Vict. c. 7 ; and 53 & 54 Vict. c. 56.

DEAD BODIES.

(48 GEO. 3, C. 75 ; 49 VICT. C. 20.)

48 Geo. 3, c. 75, contains provisions regarding the interment of dead bodies cast ashore by the sea, which must be buried by the parish. By 49 Vict. c. 20, the Act is extended and made applicable to the discovery and interment of dead human bodies cast on shore, or found in any tidal or navigable waters. Information of the finding of such body must be given to a police constable within the time specified in the Act of Geo. 3, and such constable is required forthwith to communicate the same to the parish officer therein mentioned.

A dead body is not capable of being stolen ; but it is a misdemeanor at common law to remove a corpse from a grave without lawful authority. It is also a misdemeanor, without lawful authority, to dispose of a dead body for the purpose of dissection, and for gain or profit.

It is not the duty of the police to remove a dead body from any house where it may be lying. Persons applying to the police with such an object should be referred to the parochial authorities ; but it would be incumbent on the police to interfere in cases where the exposure of the body would offend public decency.

The Births and Deaths Registration Act of 1874 requires certain relatives and persons named to give information of every death to registrar within five days. As to burial of still-born child, see title "BIRTHS AND DEATHS," *ante*.

Regarding inquests, see title "INQUESTS," *post*.

DEBTORS ACT.

The Debtors Act, 1869, is referred to under title of "BANKRUPTS," *ante*. The proceedings relative to debtors and bankrupts—fraudulent bankrupts excepted—are entirely of a civil character. Imprisonment for debt is abolished, but a power of commitment for contempt, on disobedience of an order of court for payment of debt, exists. In such cases defaulters can be arrested on warrant by county court bailiff, and police assistance

is sometimes sought to prevent a breach of the peace, but the intervention of the constabulary in such cases is seldom, if ever, required.

DESERTERS.

Under s. 154 of the Army Act, 1881 (*h*), it is lawful for any constable to apprehend and bring before a court of summary jurisdiction any person whom he may reasonably suspect to be a deserter. A constable should, however, before apprehending a man as a deserter, ascertain whether notice of the desertion appears in the Police Gazette, or he should hold a written authority from the colonel or adjutant of the regiment to which the man belongs authorising his arrest. Communications received from non-commissioned officers regarding men supposed to be deserters should not be acted upon by constables or sergeants without the authority of a superior officer.

Aiding deserter.—Under s. 153 persons are liable to be imprisoned for any period not exceeding six months for aiding or assisting deserters, or for persuading any soldier to desert.

Rewards are given for the apprehension of deserters. Application, on forms signed by justices, should be made to the War Office *at the time the deserter is committed* (*i*). Orders will be given by the War Department for the repayment of the necessary expenses incurred in the apprehension and conveyance of the deserter. A detailed statement of expenses, certified by the committing magistrate, must in all cases be forwarded, the statement to specify the person to whom the expenses are repayable.

(*h*) See title "ARMY ACT," *ante*.

(*i*) *Rewards to police.*—"In all cases where the magistrate considers that the police officer who effected the apprehension is the person deserving of the reward, his name should be recommended to the War Office in the return.

"As regards *the amount of the reward*, the recommendation should be based on the degree of trouble taken and intelligence shown in the apprehension of a deserter; and the subjoined scale has been suggested by the Secretary of State for War for the assistance of magistrates:

"1. When soldiers are apprehended in uniform, near their quarters, it is considered that, as a general rule, 5*s*. is sufficient reward. Not more than 10*s*. will be allowed in any case where the soldiers are in uniform.

"2. If they have been taken into custody at a distance, and after being absent from their regiments for any length of time, the reward may be increased to 10*s*. or 15*s*., according to the nature of the cases, and the trouble incurred in apprehension.

"3. The reward of 20*s*. should be reserved for cases where superior intelligence had been displayed in apprehending men in plain clothes and under difficult circumstances." (Home Office Circular, December 7th, 1891.)

Militia absentees.—Where an absentee or deserter from the militia has been arrested by the constabulary, notice should be sent to the adjutant of the regiment of the time and place at which the man is to be brought before the magistrates for trial.

Naval deserters.—The procedure in the case of naval deserters is governed by s. 9 of the Naval Deserters Act, 1847, and s. 50 of the Naval Discipline Act, 1866, where the warrant to arrest has been issued by the captain of the ship to which the deserter belongs. The deserter need not be taken before a justice.

Warrant.—The Army (Annual) Act, 1884 (s. 6), enables any justice to issue a warrant for the apprehension of a deserter who is or is supposed to be within his jurisdiction if satisfied of that fact upon oath.

Circulars.—In order to obviate, as far as possible, committal to prison, the Secretary of State issued instructions (October 16th, 1902) to police to at once telegraph to the military authorities on arrest of a deserter for an escort, or to obtain remand for one day to police cells.

PRETENDING TO BE A DESERTER.

Any person who falsely represents himself to any military, naval, or civil authority to be a deserter from her Majesty's regular forces shall on summary conviction be sentenced to be imprisoned, with or without hard labour, for any period not exceeding three months (s. 152 of Army Act, 1881).

DISEASES OF ANIMALS.

See title "ANIMALS, DISEASES OF," *ante*.

DISORDERLY HOUSES.

(25 GEO. 2, C. 36.)

Any person keeping a bawdy house (*k*), gaming, or other disorderly house, is liable to prosecution under 25 Geo. 2, c. 36. A person acting as master or mistress of the house will be deemed the owner (*l*), and liable to prosecution, although not, in fact, the real keeper thereof (s. 8).

(*k*) A common bawdy house is a house or room or set of rooms in any house kept for the purposes of prostitution. A married woman may be guilty of this offence as if she were single. Keeping a bawdy house is a nuisance at common law (Russell on Crimes, vol. i., p. 443).

(*l*) The owner of a house letting it out in apartments to women who use the house for immoral purposes cannot be indicted for keeping a disorderly house (*R.* v. *Stannard* (1863), 33 L. J. 61; and *R.* v. *Barrett* (1852), 32 L. J. 36).

The offence is a misdemeanor, punishable by fine or imprisonment, or both (3 Geo. 4, c. 114).

In order to encourage prosecutions against persons keeping a disorderly house, s. 5 (25 Geo. 2, c. 36), enacts that, if any two inhabitants of any parish or place (being ratepayers) give notice in writing to a constable of any person keeping any such house, the constable shall forthwith go with such inhabitants to a justice of the peace, and on their making oath before such justice that they do believe the contents of such notice to be true, and on entering into a recognizance to give or produce material evidence, the constable must enter into a recognizance to prosecute. In case of conviction the two inhabitants are entitled to a reward of £10 each if the constable prosecutes; and a constable neglecting his duty in this respect is liable under s. 7 of the Act to forfeit £20 to each of such inhabitants. By s. 6 it is enacted that when such recognizance to prosecute is entered into the justice may issue a warrant to apprehend the accused person, and shall bind him over to answer the charge at the sessions or assizes, and to be of good behaviour in the meantime.

The Criminal Law Amendment Act, 1885, makes the procedure under these statutes applicable to summary proceedings under that Act against brothel keepers for the suppression of brothels (48 & 49 Vict. c. 69, s. 13).

The suppression of brothels is specially dealt with by the Criminal Law Amendment Act, 1885. See title "WOMEN AND GIRLS," *post*.

As to harbouring prostitutes, etc., on premises, see under titles "LICENSING LAWS," "PREVENTION OF CRIMES ACTS," "TOWNS POLICE CLAUSES ACT, 1847," *post*.

DISTRESS WARRANTS.

Regarding the execution of distress warrants *addressed to the police*, see "CONSTABLES," p. 103, *ante*.

Police are bound to assist duly authorised officers of the law in the execution of warrants of distress, but such assistance should be limited to the prevention only of a breach of the peace.

Distraint for rent.—By 11 Geo. 2, c. 19, where goods are fraudulently or clandestinely conveyed or carried away from premises to prevent the landlord (*m*) from distraining for any rent then due, they may be seized by the landlord, wherever found within thirty days (*n*).

(*m*) The landlord must, however, have a right of distress at common law or under 8 Anne, c. 14, s. 67, and the tenant must be in actual possession.

(*n*) Provided the goods have not been sold *bonâ fide* before such seizure to some person not privy to the fraud (*Dibble* v. *Bowater* (1853), New M. C. 6; 17 J. P. 792).

A court of summary jurisdiction on complaint that goods or chattels exempt from distress for rent have been so taken may by order direct that

Breaking doors.—If the goods so carried away be in any house they may be seized, and in case of a dwelling-house, on oath made before justice in accordance with s. 7 of the Act, the landlord may call on the police for assistance and break open the door without any warrant.

A tenant fraudulently, etc., carrying away goods, or any person knowingly aiding in the removal or concealment of goods to prevent the landlord from distraining for rent then due, is liable to forfeit double the value of the goods (s. 4).

LODGERS PROTECTION ACT.

Two justices or a stipendiary magistrate may in certain cases order the restoration of the goods of a lodger seized for rent by a superior landlord (34 & 35 Vict. c. 79). See Treat. 35 J. P. 577.

DOGS.

Stealing dogs.—Dog stealing is not felony at common law, and no indictment will lie for obtaining a dog by false pretences, but under 24 & 25 Vict. c. 96, s. 18 (Larceny Act), dog stealing is punishable on conviction before two justices, by imprisonment for six months, or a fine of £20 above the value of the dog; and a second offence is an indictable misdemeanor. See also ss. 19, 20 of same Act.

Injury by dogs.—The owner of any dog is liable for any damage done by the dog to cattle, horses, or sheep, even although he was not negligent and was ignorant of the dog's propensities. Damages under £5 are recoverable as a civil debt at petty sessions (28 & 29 Vict. c. 60, s. 1).

By s. 2, the occupier of any room, lodging, or house in which a dog is permitted to live, is presumed to be the owner of the dog unless he can prove the contrary.

Injuries to dogs.—A man may maintain an action for damages for injuries done to his dog without lawful qualification or excuse, and under 24 & 25 Vict. c. 97, s. 41 (Malicious Damages Act, 1861), the killing (*o*) or wounding of any dog is punishable by commitment for six months, or forfeiture of £20. Under 27 &

same, if not sold, be restored, or if sold, value to be paid to complainant by person levying distress.

An uncertificated bailiff levying distress is liable on summary conviction to a fine of £10 (Law of Distress Amendment Act, 1895).

(*o*) The killing of a dog by poisoned meat placed in a garden, after notice to the owner of the dog, is not an unlawful and malicious killing (*Daniel* v. *Janes* (1861), 41 J. P. 712). The *dictum* of COLERIDGE, L.C.J., in this case has been questioned. See *Miles* v. *Hutchings*, [1903] 2 K. B. 714.

28 Vict. c. 115, poisoned meat may be placed in drains, etc., if protected from dog. See title "Poisons," *post*. As to legality of setting dog spears, see 24 & 25 Vict. c. 100, s. 31. A mere notice that dogs found trespassing on land will be shot will not justify the owner of land shooting such dogs, unless it can be shown that it was in defence of property, and that the dog was in the very act of doing mischief. The same principle obtains with regard to shooting a dog in defence of the person.

The principle which underlies the liability of an owner for injuries done to human beings by dogs is as follows: In the first place, the law takes notice that a dog is not an animal of a fierce nature, but rather the contrary; consequently, when without any actual negligence in the keeping of a dog, the dog bites a person, the dog's master is not liable in damages, unless it can be shown that the dog was, in fact, of a fierce nature, "accustomed to bite mankind," to the knowledge of his master. "A man has a right to keep a fierce dog for the protection of his property, but he has no right to put the dog in such a situation in the way of access to his house that a person innocently coming for a lawful purpose may be injured by it." Judgment of Tenterden, L.C.J., in *Curtis* v. *Mills* 5 C. & P. 487. In *Morris* v. *Nugent*, 5 C. & P. 572, Denman, L.C.J., said that the circumstance of a dog being of a ferocious disposition and being at large is not sufficient to justify shooting him; to justify such a course the animal must be actually attacking the party at the time.

In a case decided at the Guildhall, November, 1891 (*Thurgood* v. *Drew*), Wright, J., directed the jury to take into consideration the breed of the dogs (which were mastiffs) as a ground of *scientia*. The plaintiff was awarded damages, £15.

In the case of *Parsons* v. *King*, in the Divisional Court (November, 1891), Coleridge, L.C.J., held it was impossible to say there was no *scientia* in the case of the dog having bitten the plaintiff twice within an hour (8 T. L. R. 114; 36 Sol. J. 86; 54 J. P. 639).

Savage dog.—By 34 & 35 Vict. c. 56 (Dogs Act, 1871), any police officer may take possession of any dog that he has reason to suppose is savage or dangerous, which is straying on any highway or place of public resort and not under any person's control, and may detain it until the owner claims it and pays the expenses of its detention; where the owner is known a letter must be sent to him. After three clear days, if the owner is not known, and five clear days if he is known, the chief officer of police may cause the dog to be sold or destroyed if it has not been claimed and the expenses paid. The sale money must be paid to the local rate, from which the expenses of properly feeding the dog during detention must be obtained.

On complaint of a dog being dangerous (*p*) or not under proper control (*q*), a court of summary jurisdiction may, if they think fit,

(*p*) A dog in the habit of "flying" at horses and carriages so as to render an accident probable, would, we think, be a dangerous dog. See 35 J. P. 813; Stone's Justices' Manual, 37th ed., p. 246.

(*q*) "Under control" is a question of fact to be decided by the justices.

order the owner to keep it under control or destroy it, under a penalty of 20*s*. a day for every day's default (Dogs Act, 1871, s. 2).

Under the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28, any person who, in any street, to the annoyance or danger of the residents or passengers, suffers to be at large any unmuzzled ferocious dog, or any rabid dog, after public notice given directing dogs to be confined on suspicion of canine madness, renders himself liable to a penalty of 40*s*.

Mad dog, etc.—A local authority, the town council of a borough, or the local board, may, if a mad dog or suspected dog is found within their jurisdiction, make and vary orders placing any restrictions they think fit on dogs not under personal control (*r*) throughout the whole or any part of their jurisdiction, with a penalty of 20*s*. for infraction. Due notice of the order must be published at the expense of the local rate, and is a condition precedent to any conviction (Dogs Act, 1871).

Muzzling.—The Board of Agriculture and Fisheries are empowered to make orders for the muzzling and control of dogs, and for the seizure, detention, and disposal of stray dogs, unmuzzled dogs, and dogs not under control (*s*).

The Order known as the Rabies Order, 1895 (No. 5293) is revoked by the Rabies Order, 1897 (No. 5578). The provisions of the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), to apply, and dogs to be included within definition of "animals." Local authorities are required to enforce provisions of Order. The county council is the local authority under the Local Government Act, 1888 (51 & 52 Vict. c. 41), for the purpose of the Contagious Diseases (Animals) Act, 1894, under which they may appoint an executive committee, which is to have the power of the local authority.

Cruelty to dogs.—Cruelty to dogs is punishable by statute (12 & 13 Vict. c. 92) (*t*). See title "CRUELTY TO ANIMALS," *ante*.

No dog can be used to draw any cart, carriage, truck, or barrow on the public highway under a penalty of 40*s*. for a first offence, and £5 for subsequent offences (17 & 18 Vict. c. 60, s. 2).

(*r*) The question whether a dog is under control or not is one of fact for the justices (*Wren* v. *Pocock* (1876), 40 J. P. 646).

(*s*) The "muzzling order" of London County Council (March, 1896) resulted in the seizure of 10,000 dogs in the Metropolis.

(*t*) Setting dogs to fight, if they injure each other, comes within the statute (*Budge* v. *Parsons* (1863), 27 J. P. 231); as also would the cutting of dogs' ears and tails for show purposes (*Murphy* v. *Manning* (1877), 41 J. P. 130); leaving a diseased or injured dog to die in agony is not an offence (*Everitt* v. *Davies* (1878), 42 J. P. 248).

Dogs, as well as horses and asses, are protected against vivisection, except under special conditions. See "Cruelty to Animals," *ante*, p. 220.

Dog Licences.

By 30 & 31 Vict. c. 5, and 41 Vict. c. 15, no person may keep a dog above six months old without a licence under a penalty of £5, and constables are authorised to request the production of the licence, and to take proceedings under the Summary Jurisdiction Acts against persons refusing to produce or not having licences. Half the penalty recovered goes to the superannuation fund of force to which the constable belongs.

Licences expire December 31st, and must be renewed following January. The Excise seldom prosecutes till the month of January has elapsed.

Exemptions.—Hounds under the age of twelve months, dogs kept by blind persons, and shepherd dogs, if the owner makes a declaration stating the number kept.

Dogs with carriers.—By 4 Geo. 4, c. 95, s. 76, carriers are bound to fasten to their carts or carriages, while on the turnpike road, any dog that may be attending them on such road.

DRUGGING ANIMALS.

See title "Poisons," *post*.

DRUNKENNESS.

Under s. 12 of the Licensing Act, 1872, persons "found drunk" on any highway or public place, whether a building or not, or on licensed premises, are liable to penalties.

The section provides that—

> Every person who, on any highway or public place (*u*), whether a building or not, is guilty whilst drunk of riotous (*v*) or disorderly behaviour, or who is drunk whilst in charge of a carriage, horses, cattle, or steam engine, on any highway or public place, or drunk whilst in possession of loaded firearms, *may be apprehended*.

The section gave a constable no power to *arrest* for simple drunkenness (*x*), and it was questionable as to when, and to what

(*u*) For definition of "public place," see p. 233, *post*.
(*v*) The word "riotous" means noisy, turbulent, or uproarious conduct.
(*x*) Procedure being by summons.

extent, police could interfere with persons who, although drunk, were going quietly along (*y*).

The law is amended by the Licensing Act, 1902 (*z*), (Part I., ss. 1—8), and the powers of the police are considerably enlarged.

S. 1 of Act authorises the *apprehension* of any person found drunk on any highway or public place, or on licensed premises, who "appears to be incapable of taking care of himself."

S. 2 authorises the arrest of any person found drunk whilst in charge of a child under age of seven years.

Under s. 3 of Act a person convicted of drunkenness may be required to give security for good behaviour. See title "LICENSING LAWS," *post*.

Under s. 4 the "burden of proof" in cases of drunkenness on licensed premises shall lie on licensee.

S. 5.—As to protection for wife or husband of "habitual drunkard," see title "WIFE," *post*.

S. 6 of the Act is a stringent one, and under it habitual drunkards may be subjected to a system of police supervision, generally known as "black-listing."

"BLACK-LISTING" (*a*).

Where upon the conviction of an offender the court is satisfied that "an order of detention" (in certified inebriate reformatory) could be made under the Inebriates Act, 1898 (*b*), then—whether such order be made or not, the court *shall* order that notice of the conviction (with prescribed particulars) be sent to the police authority for the police area in which the court is situated—the convicted person is to be informed that the notice is so sent.

(a) If the convicted person within three years after the date of the conviction purchases, or obtains, or attempts to obtain, any

(*y*) It is no part of a constable's duty to remonstrate with or censure a drunken person.

(*z*) For provisions of Act, see title "LICENSING LAWS," *post*.

(*a*) Regarding "consent" of accused, see 67 J. P. 147 (*Commissioner of Metropolitan Police* v. *Donovan*). A letter from the deputy chairman of the Braintree Division of Essex, dated June 8th, 1903, pertinent to matter and dealing with the question of "consent," was inserted in Justice of the Peace, June, 1903 (p. 282). The point touched upon was, that when a prisoner is tried at petty sessions for larceny the justices do not ask his "consent" as to punishment, but whether he "consents" to the case being dealt with by that court.

(*b*) Under the Act of 1898 (s. 1) an order of detention may be made in case of person convicted on indictment where court considers that drunkenness was a contributing cause of the offence, and offender is found to be an habitual drunkard.

S. 2 authorises the detention of an habitual drunkard who has been *four times* convicted of drunkenness within *twelve* months.

See title "INEBRIATES ACTS," *post*.

intoxicating liquor at any premises licensed for sale, by retail, or at any "registered" club, he shall be liable to a fine for first offence of twenty shillings, and for any subsequent offence forty shillings.

(b) If a licensee knowingly supplies such person with any intoxicating liquor, he shall be liable to a fine of ten pounds, and for subsequent offence *in respect of the same person* twenty pounds.

[Police authorities are required to make regulations for the purpose of giving due information to licensed persons and registered clubs of order made, and for assisting in the identification of the convicted persons.]

S. 7.—Any person procuring (on licensed premises) or attempting to procure drink for a drunken person, or aiding and abetting such person in procuring drink, is liable on conviction to a fine of forty shillings, or imprisonment, one month.

S. 8.—**Public place.**—For the purpose of s. 12 of the Licensing Act, 1872, and of ss. 1 and 2 of Act of 1902, the expression "public place" shall include "any place to which the public have access whether on payment or otherwise."

As to detention of habitual drunkard after fourth conviction for drunkenness within twelve months, see title "INEBRIATES ACTS," *post.*

SUMMARY.

The following is a list of the cases in which a constable is authorised to *apprehend* a person "found drunk":

1. When found drunk and apparently incapable, either on licensed premises or in public place (Licensing Act, 1902, s. 1).
2. Drunk and disorderly (Licensing Act, 1872, s. 12).
3. Drunk and riotous or behaving indecently (Town Police Clauses Act, 1847, s. 29).
4. Drunk while in charge of a child under the age of seven years (Licensing Act, 1902, s. 2).
5. Drunk whilst in charge of a carriage, horse, engine, etc. (Licensing Act, 1872, s. 12).
6. Drunk in possession of loaded firearms (Licensing Act, 1872, s. 12).

As to riotous conduct on licensed premises and refusing to quit, see "CONSTABLES," Chapter III., p. 83, *ante.*

As to permitting drunkenness on licensed premises, see title "LICENSING LAWS," *post.*

As to offences (drunkenness) in towns, see title "TOWNS POLICE CLAUSES ACT, 1847," *post.*

As to offences on railway premises, see title "RAILWAYS," *post.*

As to offences by soldiers, see p. 84, *ante.*

As to "bail" by police officers, see "BAIL," p. 172, *ante.*

EDUCATION ACTS.

By the Education Act, 1902 (2 Edw. 7, c. 42), which applies to England and Wales (London excepted), the council of every county and county borough is constituted the local authority, in which are vested the powers and duties of a school board and school attendance committee under the Elementary Education Acts, 1870 to 1900, and any other Acts, including local Acts.

Employment of children.—Every person who takes into his employment any child who is under the age of twelve years or who being of that age or upwards has not obtained a certificate of school proficiency, etc., is liable to a penalty of forty shillings.

Children in factories.—Under the Factory and Workshop Act, 1901, provision is made as to the employment of children in factories, etc., subject to education certificate (1 Edw. 7, c. 22, s. 69, and s. 138).

Byelaws.—Educational authorities are empowered to make byelaws under the Education Acts requiring parents to send children not less than five and not more than fourteen years of age to school unless there is "reasonable excuse" for not doing so.

Reasonable excuse.—The fact that there is no public elementary school within three miles of residence of child which the child could attend, is "reasonable excuse" (Act of 1870, s. 74).

"Sickness or unavoidable" cause was a reasonable excuse under byelaws for a child not attending school.

Procedure.—All offences may be prosecuted summarily before two justices or a magistrate under Summary Jurisdiction Act, 1848, modified by Summary Jurisdiction Act, 1879.

Penalties.—Where fine does not exceed 10*s.*, seven days; £1, fourteen days; £5, one month; £20, two months; above £20, three months, without hard labour, except where hard labour is authorised by Act on which conviction is founded.

The Acts are enforced by officers specially appointed.

ELECTIONS.

Offences at parliamentary and municipal elections are treated of under the Ballot Act, 1872 (35 & 36 Vict. c. 33), and the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51).

Under the Ballot Act, 1872, s. 9, the presiding officer at any polling booth or polling station can *order into custody* any person who misconducts himself in the polling station.

Duties of police.—The police are usually employed to keep order at the polling station and entrances to the same. They

should render to the sheriff and sub-sheriff what assistance they can: but on no account must they interfere with the arrangements for voting or the actions of persons recording their votes. Where the police are employed as assistants in charge of the ballot boxes they should avoid being left at any time in *sole charge* of the boxes.

Police should not attend or take part in any political or public meeting, except in the discharge of their lawful duty, nor are they directly or indirectly to attempt to influence the vote of any elector. See 2 & 3 Vict. c. 93, s. 9, and 22 & 23 Vict. c. 32.

As to rioting at elections, see title "RIOT," *post.*

Police voting.—The Police Disabilities Removal Act, 1887 (50 Vict. c. 9), removes the disabilities (*c*) of police as to voting at parliamentary elections, and by a later Act (Police Act, 1893), constables can vote at municipal, school board, and other elections. See "CONSTABLES," Chapter VIII., pp. 149—152.

Police are forbidden to "canvass" voters (Police Act, 1893).

Seven days' notice must be given to the chief constable should police "sent on duty" require a "voting certificate," under s. 2 of Act of 1887.

EMBEZZLEMENT.

Embezzlement is a species of larceny, and is treated of under the Larceny Act (24 & 25 Vict. c. 96), ss. 68—70.

Section 68 of Act deals with embezzlement by clerk or servant; s. 70 with embezzlement by public officer.

The offence consists in the appropriation to his own use by a clerk, or servant, or person employed for the purpose or in the capacity of a clerk or servant, of goods or money entrusted to him for his master (*d*).

In order to establish the offence of embezzlement, the clerk or servant must have received the money or property from a *third* person on account of his master. Where he receives it *direct from his master* the offence would be larceny.

It is a question of fact for the jury whether the prisoner is or is not a clerk or servant (*R.* v. *Negus* (1873), 37 J. P. 469). An *agent* is not indictable under the statute. BRAMWELL, L.J., in *R.* v. *Walker* ((1858), Dears. & B. 600; 27 L. J. 207; Stone's Justices' Manual, 37th Edit., p. 269), thus distinguished between *principal and agent* and *master and servant:*

"A principal has the right to direct what the agent has to do,

(*c*) Disabilities existed under Police Act, 1839 (2 & 3 Vict. c. 93, s. 9).

(*d*) Under the repealed statute the offence could only be committed where the money was received by clerk "*by virtue of such employment.*"

but a master has not only that right, but also to say how it is to be done."

Any three distinct acts of embezzlement committed against the same person, within the space of six months, may be charged in the indictment, and where upon the trial it appears that the offence *amounts in law to larceny*, the jury may return a verdict accordingly.

Embezzlement by co-partners is treated of under 31 & 32 Vict. c. 116, s. 1, and falsification of accounts under 38 & 39 Vict. c. 24, s. 1.

EMBEZZLEMENT OF MATERIALS BY WORKMEN.

Under 17 Geo. 3, c. 56, and 6 & 7 Vict. c. 40, workmen and others are liable to penalties, varying from £20 to £40, or imprisonment, for embezzlement, etc., or buying or receiving materials entrusted or given out to be worked up in various manufactures—woollen, linen, fustian, cotton, iron, leather, fur, hemp, hat flax, mohair, silk, etc. 6 & 7 Vict. c. 40, ss. 2, 3, relates to the embezzlement of materials in hosiery manufactory. 28 Geo. 3, c. 55, applies to framework knitters who rent or take to hire a stocking frame, and refuse to re-deliver up the same.

EMPLOYERS AND WORKMEN.

The Employers and Workmen Act, 1875, gives justices jurisdiction in disputes to limit of £10 (s. 12).

The expression "workman" under Employers and Workmen Act, 1875, does not include a domestic or menial servant or any workman not engaged in manual labour.

By the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), various penalties are imposed on (1) persons wilfully and maliciously breaking contracts of *service* or *hiring*, the probable consequences of doing so being to endanger life or property; (2) masters wilfully neglecting, etc., to provide necessary food, clothing, lodging, etc., for a servant or apprentice where legally bound to do so, whereby health of servant or apprentice may suffer (see title, "APPRENTICES," *ante*); (3) persons intimidating, following, hiding tools, watching and besetting others with a view to compel them to abstain from doing or to do some act which they have a legal right to do or abstain from doing (penalty, £20 or imprisonment, three months); (4) against illegal trades combination and conspiracies.

Payment of wages in public-houses.—46 & 47 Vict. c. 31, also 50 & 51 Vict. c. 46, prohibits the payment of wages in public-houses. Penalty, £10.

Truck Act (1 & 2 Will. 4, c. 37).—This Act was passed to ensure artificers, etc., receiving their wages in full in the current coin of the realm, and any arrangement made by an employer regarding the supply of goods in lieu of wages, or expenditure of wages in purchases, etc., from any particular person or at any particular place, or charging interest or poundage on advances, is illegal. Penalty, £10. The Truck Act is greatly extended by the Truck Amendment Act, 1887 (50 & 51 Vict. c. 46), and the Truck Act, 1896.

EVIDENCE.

See JUSTICES, Section IV., pp. 19—29, and CONSTABLES, Chap. IV., pp. 105—108.

EXPLOSIVES ACT, 1875.

(38 & 39 VICT. c. 17.)

The Explosives Act relates to the manufacture, storing, carrying, and importing of gunpowder and other explosives. The Act is one of the most voluminous and technical in the statute book, and the duties connected therewith are usually discharged by inspectors specially appointed by the local authority, and not by police officers (*e*). Where such is the case the police are seldom required to intervene, except under the *general power of search* contained in s. 73 of Act.

Power of search.—A Government inspector, or any constable, or any officer of the local authority, if such constable or officer is specially authorised either—

(1) by a warrant of a justice (which may be granted upon reasonable ground being assigned on oath), or

(2) if the case is one of emergency, and delay in obtaining a warrant would be likely to endanger life, by a written order from a superintendent or other officer of police of equal or superior rank, or from a Government inspector, upon reasonable cause for believing that any offence has been or is being committed with respect to an explosive, in any place (whether a building or not, or a carriage, boat, or ship),

(*e*) Where a police officer is appointed an inspector under the Explosives Act, 1875, he should hold *a written authority*, showable on demand, for his appointment.

may on producing, if demanded, his authority, enter at any time, and if needs be by force, as well on Sunday as on other days, and examine the same and search for explosives therein and take samples of any explosive and ingredients of an explosive.

Penalties.—Penalty for failing to admit, or in any way obstructing the officer, not exceeding £50 and forfeiture of explosives and ingredients (s. 73).

Penalty for obstructing officer of local authority, £20 (s. 69).

Apprehension.—Any person who commits an offence against this Act, tending to cause explosion or fire in or near any factory, railway, canal, magazine, boat, wharf, carriage, etc., *may be apprehended without warrant by a constable*, or by the occupier, or his agent (s. 78).

Government inspectors' reports, etc.—The Act gives large powers to Government inspectors (ss. 55, 56), and requires notice to be given to Secretary of State of any accident causing injury or loss of life on registered premises, ship, carriage, etc. Penalty for failure, £20 (s. 62).

Explosive.—The term "explosive" means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting-powders, fulminate of mercury or other metals, coloured fires, and every other substance used or manufactured to produce a practical effect by explosion or a pyrotechnic effect, and includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

The definition is extended by Order in Council No. 1, dated August 10th, 1875, which divides explosives into *seven* classes and *minutely defines* same. The term "gunpowder" is, however, exclusively gunpowder so called.

"Fireworks" comprises firework composition and manufactured fireworks.

Acetylene, when it is an admixture with air or oxygen, is declared an explosive by Order in Council, May 15th, 1900, which deals with keeping, conveyance, sale, etc. See 64 J. P. 667.

GUNPOWDER.

Manufacture.—Manufacture is not to be carried on except at factory lawfully existing, or licensed under the Act—penalty, £100 a day (s. 4). Persons re-making or repairing explosives are deemed manufacturers (s. 105).

"Keeping," etc.—Gunpowder, except kept for private use (in quantities not exceeding 30 pounds) (*f*), can only be kept in factory in licensed magazine or store, or in registered premises (s. 5).

Carriers.—The Act contains special provisions as to conveyance of gunpowder by carriers (s. 5).

Licences.—The Act provides for grant of licences by Secretary of State and local authority (ss. 6—8). Licences may be granted by local authority (*g*) for keeping gunpowder (not exceeding two tons), such licences to be renewable annually (ss. 15—18).

In the case of retail dealers, premises must be registered (*h*) annually with local authority for the keeping of gunpowder (s. 21). The local authority requires a certificate from its inspector as to fitness of store or magazine before granting licence, and compliance is required with certain conditions set out in s. 22 of Act (*i*).

Storage, etc.—In the case of retail dealers the gunpowder must be kept in a house or building or in a fire-proof safe. The amount of gunpowder, if kept in a detached building constructed for the purpose, must not exceed 200 pounds, nor if kept *inside* a dwelling-house 50 pounds, unless kept in a fire-proof safe, when 100 pounds may be kept.

Neither building nor safe for keeping gunpowder is to have *any exposed iron or steel* in interior thereof. Articles of explosible or inflammable nature are not to be kept with gunpowder, and all gunpowder exceeding one pound in amount is to be kept in a substantial case, bag, or canister (s. 22).

[NOTE.—Subject to provisions contained in Part II. of Act similar provisions as to those relating to gunpowder are to apply to every other explosive (s. 39), except to safety cartridges for private use.]

Private use.—By Order, April 21st, 1883 (London Gazette), the prohibition in Part I. of Act as to keeping gunpowder in an unauthorised place does not extend to a person keeping for his

(*f*) See p. 240, *post*.

(*g*) "Local authority" is defined in s. 67 of Act.

Where the county council is the local authority, they may delegate their powers to district councils or to justices in petty sessions.

(*h*) Fee for registration, 1*s*.

(*i*) The amount which may be kept varies according to class and mode of storage. See Order in Council, No. 16.

private use and not for sale gunpowder not exceeding thirty pounds, and that subject to provisions in Part II. (s. 39) the provisions as to gunpowder apply to every other description of explosive. Where such explosive consists of safety cartridges an amount containing not more than five times the maximum amount of gunpowder above mentioned may be kept. There shall not be kept for private use any explosive which is not an authorised explosive or which is an explosive of the fulminate class.

Regarding fireworks where such are obtained for immediate use, no restriction exists as to the amount if kept for a period not exceeding fourteen days in a safe and suitable place.

Exceptions.—Exceptions are made as to explosives required for any industrial, agricultural, sporting or other special purpose, which may be kept under a certificate granted by the chief officer of police of the district.

Fog-signals, etc.—Percussion caps, safety fuses for blasting, and fog-signals by railway company for use on railway of such company may be kept without licence or registration (s. 50).

E. C. powder, etc.—A further Order was made in Council, September 24th, 1886, to the effect that a certificate shall not be required to authorise the keeping for private use of Schultz gunpowder, E. C. sporting powder, E. C. rifle powder, or other nitro-compound adapted and intended exclusively for the use of cartridges for small arms.

PACKING AND CONVEYING OF GUNPOWDER.

Gunpowder, if under five pounds, must be packed in a substantially closed case (s. 33).

If over five pounds, the powder must be contained either in a single package or in a double package, as described in s. 33.

Packages must be used for no other purpose, and no iron or steel may be exposed, internally or externally.

No more than 100 pounds is to be in any one package, except with Government inspector's consent and under conditions approved by him.

The outside case must be marked conspicuously "Gunpowder."

As to byelaws of railways, etc., regulating conveyance of gunpowder, see ss. 34—36.

As to byelaws regarding conveyance of explosives on road, etc., see Order of Secretary of State, No. 4.

No explosive above five pounds to be conveyed with passengers.

The conveyance of certain explosives is prohibited.

Extra precautions must be taken, when the means of carriage do not afford sufficient protection, such as covering the packages

with painted cloth, tarpaulin, wadmill-tilts, or other suitable material.

A carrier must be informed of the nature of the package (Order of Secretary of State, No. 4).

An intoxicated person in charge of packages may be apprehended.

Greatest amount allowable in any one boat or carriage, 2,000 pounds, except—

(1) Where the carriage is protected on all sides with wood, or metal, when the maximum to be conveyed on a private railway is 10,000 pounds; in any other carriage, 4,000 pounds.

(2) In a boat, protected from fire from outside by decks, 50,000 pounds.

In a carriage or boat conveying over 100 pounds no matches, fire, or any substance likely to cause explosion or fire may be introduced (Order of Secretary of State, No. 4).

Various Orders (No. 3D (1898), No. 3E (1899), No. 3F (1901), No. 3G (1902)) have been issued by the Secretary of State modifying and adapting the general rules as to the packing for conveyance of gunpowder and of explosives other than gunpowder.

HAWKING, SELLING, ETC., OF GUNPOWDER.

Section 30 forbids hawking, selling, etc., of gunpowder in public places. Penalty, 40*s*., and forfeiture.

Section 31 forbids selling to children apparently under thirteen years old. Penalty, £5.

Section 32 forbids the sale of quantities over one pound except in substantial closed cases, and all cases must be conspicuously labelled "Gunpowder," etc. Penalty, 40*s*.

ORDERS IN COUNCIL.

Nos. 1, 1A. Classification of explosives.

Orders, Nos. 2, 3, 4, 5, 6, and 6A. General rules applicable to factories, magazines, and stores, etc.

Nos. 7, 7A, and 7B. Cancelled by Order in Council, No. 16.

No. 9. Sale of explosives.

No. 10. Importation of explosives; No. 10A, of fireworks.

No. 11. Notice of accidents in *conveyance* of explosives, but not gunpowder unless the latter exceeds 1,000 pounds.

No. 12. Relates to explosives for private use.

No. 13. Amends Nos. 6A and 12 as to keeping and storing small arm nitro-compounds.

No. 14. Picric acid—when deemed an explosive.

[A Circular modifying Order, where acid is diluted with water, was issued April, 1905.]

No. 15. Prohibition of sulphur explosive mixture.

No. 16. Relates to premises registered for the keeping of mixed explosives (*k*).

Acetylene.—Three Orders issued 1898 (No. 248), 1900 (No. 345), and 1901 (No. 310), deal with the keeping, conveying, etc., of acetylene.

Order in Council No. 17, issued November 26th, 1897, defines conditions under which acetylene is to be deemed an explosive within meaning of Act.

PROCEDURE, PENALTIES, ETC.

Offender may be prosecuted either by indictment or in a summary manner ; but the accused may claim the former.

Pecuniary penalties may in cases of wilful negligence where life has been endangered be supplemented by imprisonment not exceeding six months (s. 79).

EXPLOSIVE SUBSTANCES ACT, 1883.

(46 Vict. c. 3.)

Explosions.—Causing explosion likely to injure life or property is a felony, punishable by penal servitude or imprisonment (s. 2).

Attempting to cause explosion or making or keeping explosive with intent to cause same, is felony (s. 3) ; as is also making or keeping explosives, under suspicious circumstances (s. 4).

Accessories are punishable as principals.

Procedure.—The Attorney-General may order an inquiry by a justice, who can summon witnesses, and arrest absconding witnesses, although no person may have been charged.

Definition.—The expression "explosive substance" shall be deemed to include any materials for making any explosive substance ; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance ; also any part of any such apparatus, machine, or implement.

EXTRADITION AND FUGITIVE OFFENDERS.

Extradition treaties are made under the Extradition Acts of 1870 and 1873, and Act of 1895 (*l*).

(*k*) This is an important Order, and was passed October 26th, 1896, to replace Orders 7, 7A, and 7B. It was published in London Gazette, January 30th, 1896.

(*l*) No fugitive criminal shall be surrendered if the offence in respect of which the surrender is demanded is one of a political character.

Under these treaties persons charged with certain offences can be surrendered by either state to the other in accordance with the provisions of the several treaties.

Treaties have been made by the British Government with the following countries, viz. :

Argentine Republic.	Germany.	Roumania.
Austria.	Guatemala.	Russia.
Belgium.	Hayti.	Salvador.
Bolivia.	Italy.	San Marino.
Brazil.	Liberia.	Servia.
Chili.	Luxemberg.	Spain.
Colombia.	Mexico.	Sweden and Norway.
Denmark.	Monaco.	Switzerland.
Ecuador.	Netherlands.	United States.
France.	Portugal.	Uruguay.

The following crimes (enumerated in Schedule to Act of 1870) are common to all treaties : murder, manslaughter, counterfeiting and uttering coin, forgery, embezzlement, larceny, obtaining money or goods by false pretences, crimes by bankrupts against bankruptcy laws, fraud by a bailee, trustee, public officer, etc., rape, abduction, child stealing, burglary and house-breaking, arson, robbery with violence, threats to extort, and certain crimes committed on "high seas," as piracy, sinking vessels, revolt, assault, etc., which are, however, excluded from certain specified treaties.

The Act of 1873 added considerably to the above list, including in several of the European and American treaties, kidnapping, perjury, and a number of indictable offences under the Criminal Law Consolidation Acts of 1861, larcenies, coinage offences, forgeries, malicious injuries, offences against the person (*m*), bigamy, abortion, indecent assault, etc., also certain offences against the Slave Trade Act, 1873.

Procedure.—The general procedure for extradition of offenders escaping from the United Kingdom is fully set out in the Home Office Memorandum, A. 51139. See p. 244, *post*. The facts of the case have to be supplied to the Home Secretary by the prosecutor or by the police, giving in detail information as to fugitive's supposed whereabouts and identification, accompanied by the warrant of arrest or a certified copy and deposition taken containing *primâ facie* evidence of the commission by the fugitive of the offence charged, such as in this country would justify his committal for trial, and "an indemnity," signed by the prosecutor,

(*m*) Bigamy is included in treaties with Argentine, Bolivia, Belgium, Chili, Colombia, France, Guatemala, Luxemberg, Mexico, Portugal, Salvador, Spain, Uruguay.

undertaking to pay expenses, must accompany the application. If "provisional arrest" be desired, it should be asked for by telegram.

As to arrest of a fugitive criminal *from a foreign state* within the United Kingdom, see p. 246, *post*.

FUGITIVES FROM THE UNITED KINGDOM.

Extradition.—When a person charged with crime in the United Kingdom is believed to have fled to a foreign country, the questions to be considered before an application for extradition is made are:

(1) Whether there is an extradition treaty with the country to which the accused has fled? (*n*)

(2) Whether the crime with which he is charged is included in the treaty?

(3) Whether the offender is a subject or citizen of the country to which he has fled?

The application for extradition must be addressed by the prosecutor or the police to the Secretary of State for the Home Department.

Chief officers of police may communicate direct with foreign police for purposes of *information*, but under no circumstances should direct application be made for the *arrest* of a fugitive. Serious difficulties have arisen in cases where this direction has been overlooked (*o*).

In cases of urgency, the Secretary of State is empowered to apply by telegram for a provisional arrest.

The application to the Secretary of State should be made by letter, and must be accompanied by—

(a) The warrant of arrest (or certified copy), and

(b) Any other documents (*p*) to be used in support of the demand.

(c) A description of the accused with, if possible, a photograph.

(d) An indemnity for expenses (*q*).

In cases of urgency, where "provisional arrest" is sought, it will sometimes be sufficient to furnish warrant of arrest and the

(*n*) See list of countries with whom treaties have been made, p. 243, *ante*.

(*o*) In a Circular Letter of June 9th, 1891, the Home Secretary drew special attention to the matter, stating that the rule against direct application to foreign police could admit of no exception, and that officers of police disregarding it would incur the severest censure.

(*p*) As regards these documents, the requirements of different treaties vary somewhat.

(*q*) See "Indemnity," p. 245, *post*.

indemnity, provided an explicit undertaking be given to complete the informations, etc.

Indemnity.—The indemnity for expenses must be in proper form, and must be signed by the prosecutor.

A form of indemnity is given in Appendix to the Memorandum of December, 1903 : the operative words of the agreement are :

"I, the undersigned, do hereby agree . . . to pay . . . all expenses incurred . . . in taking steps to obtain the surrender of . And I further agree to indemnify the Secretary of State . . . against any expenses to which he may be put, and against any compensation or damage . . . in the event of the unlawful arrest of any person, if, in the opinion of the Secretary of State, such unlawful arrest is caused by imperfect or inaccurate information or description given by me."

Police sent abroad.—It is sometimes considered desirable that an English police officer should be sent out to assist the foreign police.

Such officer should take with him a letter of introduction for presentation to British ministers or consuls abroad.

He should, where possible, see the warrant and depositions signed, as cases have occurred where his evidence to this effect has removed difficulties.

The officer must confine his action strictly to tracing the fugitive, and furnishing information. Under no circumstances may he himself attempt an arrest or interfere in any way with his liberty in a foreign country, or endeavour to secure the return of the accused without awaiting the formalities of extradition.

When the decision of the Government of the foreign country to concede the surrender of the fugitive is notified, the conveyance of the prisoner to England is a matter of arrangement, and the necessary instructions are sent by the Home Office to the head of the police force concerned.

As to procedure in particular cases (*r*).—*United States.*—A memorandum as to procedure in extradition cases in the United States was issued by the Foreign Office, April 19th, 1887.

In United States cases, it is, as a rule, necessary to send out an officer to bring home the prisoner, and in cases of extradition from Spain, an officer has usually been sent out when the demand for extradition was made.

FUGITIVES FROM FOREIGN COUNTRIES.

For the arrest of a foreign criminal in the United Kingdom, two alternative procedures are provided in the Act of 1870 (33 & 34 Vict. c. 52, s. 8, paragraphs 1, 2.

(*r*) Home Office Circular, revised December 1st, 1903.

The first, under paragraph 1, is adopted in cases where the arrest is not urgent.

A requisition for the surrender of the accused (supported by warrant), is addressed by the foreign Government to the Foreign Office, and transmitted to the Home Department, who thereupon make an order to the Chief Magistrate at Bow Street, requiring him, if satisfied as to the sufficiency of the evidence, to issue his warrant for the arrest of the fugitive.

Provisional arrest.—The alternative procedure, under paragraph 2, is adopted in cases of urgency. In these cases any police magistrate or justice of the peace may issue the warrant "on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed, or the criminal convicted, in that part of the United Kingdom in which he exercises jurisdiction."

In practice, a sworn information showing a reasonable suspicion of the commission of the crime and of the guilt of the alleged offender is required (*s*). This may be based upon a letter or telegram purporting to be from a diplomatic, judicial, or police authority, stating—

The alleged offence;

That a warrant has been granted;

That extradition will be demanded.

On the issue of the warrant of arrest, under paragraph 2, the justice forthwith sends to the Secretary of State "a report of the fact of such issue."

On the arrest of a fugitive, if the warrant was issued at Bow Street, the prisoner is to be brought to that court; if the warrant was issued elsewhere, the prisoner is brought before the justice who issued the warrant (or some other justice), for transmission to Bow Street.

The officer who made the arrest should bring up the prisoner to London, and attend with him at Bow Street.

After the prisoner is brought to Bow Street, the subsequent proceedings take place in that court, in accordance with the requirements of the Extradition Acts and of the several treaties.

The arrest of an offender with a view to extradition should not take place without a warrant, save in the most urgent and exceptional cases, and should then be guided by the ordinary law of arrest (*t*).

(*s*) In *R.* v. *Weil* ((1882), 9 Q. B. D. 701; 15 Cox C. C. 189; 53 L. J. 74), JESSEL, M.R., remarked: "All that the Act requires is that the evidence should be sufficient 'in the opinion of the person issuing the warrant.' That is a matter of judicial discretion. There must be some evidence but very little will do, for it is merely for the purpose of detaining the man." See also note (*t*).

(*t*) If a person has been arrested without warrant, a warrant under

The proceedings for the arrest of an offender *convicted in a foreign country and escaping to England*, are the same as those in the case of an accused person.

"**High seas.**"—In cases of crimes committed on foreign vessels on the high seas (*u*), when the vessel comes into a British port, and the surrender of the criminal is sought, the stipendiary magistrate having jurisdiction in, or in the place nearest to, the port, may exercise the powers which in other cases are exercised by the Chief Magistrate at Bow Street.

Expenses.—Where a person whose extradition is claimed is arrested by provincial police, the expenses incurred in connection with the arrest should be reclaimed from the Metropolitan Police.

Fugitive Offenders Act, 1881.

(44 & 45 Vict. c. 69.)

This Act deals with cases in which a person accused of having committed an offence in one part of his Majesty's dominions is found in another part of such dominions. Such person is liable to be apprehended and returned in manner provided by this Act to the part from which he is a fugitive; he may be apprehended under an indorsed warrant or a provisional warrant. See p. 246, *ante*.

Warrants may be indorsed by a judge of a superior court, the Secretary of State, a metropolitan police magistrate at Bow Street, by the governor of any British possession.

Where an offender has fled to any British possession, an order for his return can be obtained, if the offence be treason or piracy, or any offence punishable by imprisonment for twelve months or any greater punishment.

No question of nationality arises in this case.

The application for the return of a fugitive from a British possession should be addressed to the Secretary of State. In cases of urgency, a telegram asking for the provisional arrest of the fugitive is sent by the Home Department to the competent authority in the British possession.

The applications to the Secretary of State should be made by letter, stating briefly the facts of the case, and accompanied by—

(1) The warrant of arrest in duplicate.

s. 8, paragraph 2, should be obtained as quickly as possible (*R.* v. *Weil*, *ante*, note (*s*).

(*u*) The English courts have not jurisdiction at *common law* over offences committed on the high seas on foreign ships under command of a foreigner, although within three miles of the English coast.

(2) The documents (depositions, etc.) containing the evidence, etc.
(3) A description of the accused, which should form part of the formal evidence.
(4) An indemnity for expenses. If the "provisional arrest" of the fugitive be desired, it should be asked for by telegram.

In cases of urgency it will usually be sufficient, in order to obtain a "provisional arrest," to furnish a warrant of arrest and the indemnity for expenses. The warrant, informations, and depositions are to be sent to the Home Office in duplicate, in order that two complete sets of documents may be authenticated with the Secretary of State's seal.

Depositions may be taken in the absence of the accused.

Expenses.—The whole of the expenses incurred, including the cost of telegrams and the expense of sending out an officer to bring home the prisoner, must be borne by the prosecutor.

FUGITIVES FROM BRITISH POSSESSIONS.

For the arrest of a fugitive *from a British possession*, two alternative procedures are provided :

(a) Apprehension under an endorsed warrant (s. 3).
(b) Apprehension under a provisional warrant (s. 4).

The first course is adopted in cases where the arrest of the fugitive *is not urgent.*

The process of apprehension on "provisional warrant" is intended for *cases of urgency*, and most cases from the colonies fall under this head. A provisional warrant may be issued (s. 4) by any justice for the apprehension of any fugitive who is, or is suspected of being in, or on his way to the United Kingdom.

In practice, a sworn information showing a reasonable suspicion that an offence has been committed, that the alleged offender is the guilty party, and that the offence is punishable by twelve months' imprisonment or some greater punishment, is required before the issue of the provisional warrant.

The justice issuing the provisional warrant, forthwith sends a report thereof to the Secretary of State. The magistrate before whom the offender is brought, orders him to be taken to the Bow Street Police Court.

The proceedings for the arrest of an offender *convicted in a British possession and escaping to England*, are the same as those in the case of an accused person.

Expenses.—The expenses of arresting and procuring the return of a fugitive under the Fugitive Offenders Act, are to be borne by

the Government or individual applying for his return, and cannot be charged either to imperial or police funds. The police should therefore, as a rule, *incur no expenditure* and take no steps *unless* they are either acting under instructions from the Secretary of State, or have obtained an adequate indemnity or prepayment from the persons applying for the return of the fugitive. *Only in the event of emergency*, where the loss of a few hours would be irretrievable, will they be justified in taking any such action as may be imperatively required; but the matter should, as soon as possible afterwards, be reported to the Secretary of State.

By Order in Council (s. 36 of Act of 1881), the Act can apply to any place *in which his Majesty has jurisdiction*, as if such place were a British possession.

EXTORTION.

Extortion is the taking of money by a public officer under the colour of office where none at all is due, or not so much due, or when it is not yet due. The offence is a misdemeanor, punishable by fine or imprisonment, or both (Russell on Crimes). See also "THREATS," *post*.

FACTORIES AND WORKSHOPS.

The various statutes relating to factories and workshops were consolidated, and the law extended and amended by the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22).

The provisions of the Act are numerous and complicated, and a volume containing "Statutory Orders" was issued by the Home Office, February, 1901.

The Act is divided into ten parts, consisting of 163 sections and seven schedules.

Inspectors.— Inspectors under the Act are appointed by the Secretary of State, and have power to enter and inspect, at all reasonable times, factories and workshops and enter any school (s. 119).

Sections 115 and 149 define the premises to which the Act applies. See also s. 156.

Factories are premises in which machinery is moved by steam, water or other mechanical power.

A workshop is a place where no such power is used, but where manual labour is exercised by way of trade or for purposes of gain.

"Domestic factory" and "domestic workshop" mean a private house, room or place, which, though used as a dwelling,

is, by reason of the work carried on there, a factory or workshop as the case may be, and in which no mechanical power is used, and in which the only persons employed are members of the same family dwelling there.

Special regulations (ss. 97—102) relate to bakehouses (see title "BAKEHOUSES," *ante*), and as to Laundries, see s. 103.

Part I. of Act relates to health (*v*) and safety of employees.

Part II. (ss. 23—67) to the "employment" of children, young persons and women, and

Part III. of Act (ss. 68—72) provides for the education of children employed in factories.

Penalty on occupier of factory or workshop not kept in conformity with Act, £10 (s. 135).

Section 139 of Act deals with a variety of offences, the penalties, varying from 10s. to £20, and in case of false entries or certificates, a penalty of £20 or three months' imprisonment.

SHOPS REGULATION ACTS, 1892 TO 1904.

The Shop Hours Act, 1892 (55 & 56 Vict. c. 62), limits the number of hours during which a "young person" may be employed in or about a shop (*x*) (or on licensed premises), which are limited by s. 3 to seventy-four hours (including meal times) in any one week. Penalty for contravention of Act, £1 (*y*).

The term "shop" means retail and wholesale shops, market stalls, and warehouses, and includes licensed public-houses and refreshment-houses of any kind.

The term "young person" means a person under the age of eighteen.

The Shop Hours Act, 1895, requires that a conspicuous notice referring to the provisions of the Act is to be exhibited in shops where "young persons" are employed. Penalty for contravention of Act, £2 (58 Vict. c. 5).

Seats for Shop Assistants Act, 1899 (62 & 63 Vict. c. 21).—S. 1 enacts that: "In all rooms of a shop, or other premises where goods are actually retailed to the public, and where female assistants are employed for the retailing of goods to the public, the employer carrying on business in such premises shall provide seats behind

(*v*) The number of cubic feet of space in any room should bear to the number of persons employed therein a proportion of 250 or, during overtime, 400 cubic feet to each person.

(*x*) The Act is not to apply to shops where the only persons employed are at home, viz., members of the same family dwelling there.

(*y*) County and borough councils may appoint inspectors under Act—in city of London, the common council. Procedure as under Factory and Workshop Act, 1901.

the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female assistants employed in each room."

S. 2.—Penalty for contravention of Act, first offence, £3; second offence, £5.

The Act to be read as one with the Shop Hours Acts, 1892 to 1895.

The Shop Hours Act, 1904 (4 Edw. 7, c. 31), provides for the early closing of shops.

S. 1 enacts that: "An order (in this Act referred to as 'a closing order') made by a local authority and confirmed by the central authority (*z*), in manner provided by this Act, may fix the hours on the several days of the week at which, either throughout the area of the local authority or in any specified part thereof, all shops or shops of any specified class are to be closed for serving customers."

S. 2.—(1) The hour fixed by a closing order shall not be earlier than seven p.m., except that on one specified day in the week it may be an hour not earlier than one p.m.

Sub-ss. (2) to (5).—As to contents and effect of order. The order may define the shops and trades to which the order applies, and authorise sales after the closing hour in case of emergency.

Orders shall not apply to fairs lawfully held or bazaars for charitable purposes, nor to shops where the only trade or business carried on is one of those mentioned in Schedule to Act.

S. 3.—As to procedure by local authority for making orders—public notice has to be given, and the approval of at least two thirds of the shopkeepers affected must be obtained.

As soon as the central authority (see s. 8) have confirmed any order, the order shall become final and have the effect of an Act of Parliament: Provided that every closing order shall be laid before Parliament as soon as may be after it is confirmed, and the order may be appealed against within forty days.

S. 4.—The central authority may at any time on the application of the local authority revoke a closing order.

S. 5.—Penalty for first offence, £1; second offence, £5; third offence, £20 (*a*).

S. 6.—Power to central authority to hold inquiries.

S. 7.—The central authority may make regulations for prescribing anything which under the Act is to be prescribed, and generally for carrying into effect the provisions of the Act.

(*z*) For definition see s. 8, p. 252.

(*a*) It shall be no offence to serve after the closing hour any customer who was in the shop before the closing hour (s. 5).

S. 8.—*Definitions.* The expressions "local authority," "shops," "central authority" are defined. The expression "shop" includes any premises or place where retail trade (including the business of a barber) is carried on. The expression "central authority" means in England a Secretary of State.

S. 9.—Power of county councils to delegate powers under the Shop Hours Acts, 1892 to 1895.

S. 10.—This Act may be cited as the Shop Hours Act, 1904, and the Shop Hours Acts, 1892 to 1895, and the Seats for Shop Assistants Act, 1899, and this Act, may be cited together as the "Shops Regulation Acts, 1892 to 1904."

Schedule referred to in s. 2.

Post Office business.
The sale of medicines and medical and surgical appliances.
" " intoxicating liquors by retail.
" " refreshments for consumption on premises.
" " tobacco and other smokers' requisites.
" " newspapers.
The business carried on at a railway bookstall or at a railway refreshment room.

FALSE PERSONATION.

By 37 & 38 Vict. c. 36, any person who shall falsely and deceitfully personate any person, or the heir, executor or administrator, wife, widow, next of kin, or relation of any person with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property, shall be guilty of felony. The offence is not triable at sessions.

Any person falsely representing himself as any particular man in the regular, reserve, or auxiliary forces is guilty of personation (44 & 45 Vict. c. 58, s. 142 (2)); and see sub-s. (3) as to person guilty of offence under False Personation Act, 1874, in relation to any military pay, pension, etc.

FALSE PRETENCES.

The obtaining from any person any chattel (*b*), money, or valuable security with intent to defraud is a misdemeanor (*c*) (as

(*b*) A dog is not a chattel (*R.* v. *Robinson* (1859), 28 L. T. 58).

(*c*) As to obtaining signatures with intent to defraud, see s. 90 of Larceny Act, 1861. Incurring liability by obtaining credit by false pretences is a misdemeanor (32 & 33 Vict. c. 62, s. 13). See title "BANKRUPTS," *ante*. As to "cheating," see title, "CHEATING," *ante*.

is also the "attempt"), and is treated of under ss. 88–90 of the Larceny Act. See Appendix, *post*.

Found committing.—Any person "found committing" an offence against 24 & 25 Vict. c. 96, s. 88 (see Appendix), may be apprehended without warrant (s. 103); but if an interval of several hours intervene the arrest should be made under a warrant.

A "false pretence" is a false representation made either by words, writing, or conduct that some fact exists or existed.

The "pretence" must be of some *pretended existing fact*, and be made for the purpose of inducing the prosecutor to part with his property. It must be shown that he did so part with it *by reason* of the false pretence. The expression does not include a *promise* as to future conduct. For instance, a promise to pay for goods on delivery is not a false pretence, but representing that another person had sent for them is. Exaggerated praise or commendation of an article, sold in the ordinary course of business, is not a "false pretence."

The law of false pretences is involved in some obscurity.

The decisions of the superior courts are perplexing if not contradictory. The difficulty arises from the nice distinction drawn between a false pretence and a naked lie not cognisable in a criminal court, and from the latitude allowed to traders in stating or overstating the merits of the commodities in which they deal.

The law of false pretences underwent an elaborate discussion in the case of *R.* v. *Byron* (1846), 26 L. T. 84, and the court attempted to define the line betwixt commercial licence and fraudulent misrepresentation. The question was further considered in *R.* v. *Foster* (1877), 41 J. P. 295, where an adulterated and injurious mixture had been sold as good tea.

In *R.* v. *Dickson and Hubbard*, Central Criminal Court, January, 1883, two men engaged in a system of "long firm" transactions were convicted of obtaining goods under false pretences. At Chester Assizes, February, 1878, a conviction was secured for obtaining money by false pretences by the fraud of advertising loans and so obtaining money from applicants as preliminary expenses, the parties having no visible means of granting loans (*R.* v. *Spenser and Batterham*).

The offence is distinguishable from larceny (*d*), inasmuch as the owner *consents* to the property being taken out of his possession, though such consent has been induced by fraud. In *larceny* the

(*d*) As to distinction between the offence of obtaining goods by false pretences and larceny, see *R.* v. *Prince* (1868), L. R. 1 C. C. R. 150; 19 L. T. 364.

property is taken against the wish and intention of the owners; but if upon the trial of any person indicted for the misdemeanor of obtaining goods, etc., by false pretences, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of the misdemeanor (Larceny Act, 1861, s. 88).

Evidence of previous attempts (*e*) to obtain money by false pretences is admissible to prove guilty knowledge (*R.* v. *Francis* (1874), 38 J. P. 469; L. R. 2 C. C. R. 128).

The following are offences within the meaning of the statute: Obtaining a charitable gift by means of a begging letter containing a tale of fictitious distress (*R.* v. *Jones* (1850), 19 L. J. 162); obtaining money by pretending to have power to communicate with spirits of deceased persons (*R.* v. *Lawrence* (1877), 41 J. P. 549); obtaining money by way of loan by means of false pretence (*R.* v. *Crossley*); falsely representing to a pawnbroker that a ring or chain was silver (*R.* v. *Bull* and *R.* v. *Roebuck* (1856), 25 L. J. 101).

A false pretence may be made by the use of ambiguous words, if those words are naturally and reasonably capable of conveying the pretence; but the false pretence need not necessarily be in words. It has been held that where a party gave a cheque on a banker with whom he had no account (*R.* v. *Hazelton* (1874), 44 L. J. 11), or obtained goods and money for a forged note of hand, or assumed the gown and cap of a commoner of the University of Oxford, and obtained money or goods by means of the fraud, the offence is within the statute (Russell on Crimes, p. 638).

A person entered a coffee tavern, and having had food attempted to leave without paying for it; he had not in fact any money wherewith to pay. The judge (Mr. PRENTICE, Q.C.) left the jury to say whether when the prisoner called for the food he intended to represent that he was of present ability to pay for it, and whether if so he was aware of his want of ability and intended to defraud. The prisoner was convicted at Middlesex Midsummer Sessions, 1883 (47 J. P. 507). See also 48 J. P. 682; 50 J. P. 483; and *R.* v. *Stewart*, at North London Sessions, October 8th, 1895 (59 J. P. 650). Cases of this kind are of frequent occurrence and occasionally come within the Debtors Act, 1869, s. 13 (*R.* v. *W. Jones*, [1898] 1 Q. B. 119; 62 J. P. 33). See also p. 255.

Collecting alms.—Any person going about collecting charitable contributions under false pretences is liable to imprisonment under the Vagrancy Act, 1824, s. 4.

(*e*) As offering spurious articles in pledge to one person before offering other spurious articles to another.

Offences not within the statute.—Falsely pretending that a person will pay for goods on delivery (*R.* v. *Goodhall* (1821), R. & R. 461. Falsely warranting a horse (*R.* v. *Pycroll* (1816), 1 Stark. 402, and *R.* v. *Keighley* (1856), 20 J. P. 771 (but in *R.* v. *Foster* (1894), 58 J. P. 465, a person was found guilty of false pretences on sale of a horse which had been returned to him as unsound and sold again about an hour later with a warranty of soundness)). False representations as to the nature and profits of a business to induce a party to enter into partnership. In *R.* v. *Jones* (1884), 48 J. P. 616, where a false name and address had been given for the purpose of obtaining articles at a draper's shop, a conviction was quashed, STEPHENS, J., holding that the case did not differ from the common case of giving a wrong address which *may be a falsehood but is not a false pretence*. Obtaining lodgment on the representation that the party was an officer in his Majesty's forces (*R.* v. *Gardner* (1856), 25 L. J. 100).

Food and lodging.—If a person obtain a night's lodging by a false pretence and does not ask for or obtain any money or chattel, he is not liable to punishment; but if he by means of the false pretence obtain as much as a cup of tea or a piece of bread and butter along with the lodging, then he may be convicted of the misdemeanor of obtaining goods by false pretences.

Trial.—The trial must take place where the chattel, money, etc., was obtained, or where the pretences were made. An article sent by post by request is "obtained" where the letter is posted (*R.* v. *Jones* (1850), 19 L. J. 162).

Regarding "cheating" and "cheating at play," see titles "CHEATING," and "GAMING," *ante*.

SUMMARY JURISDICTION ACT, 1859.

A court of summary jurisdiction, dealing with a case of false pretences, is required by S. J. Act, 1899, to explain to a person charged that a false pretence means a false representation by words, writing, or conduct that some fact exists or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence (62 & 63 Vict. c. 22).

FERTILISERS AND FEEDING STUFFS ACT, 1893.

(56 & 57 VICT. c. 96.)

Contains provisions as to warranty on sale of fertilisers and feeding stuffs. The following are offences: Failing to give invoice required by Act; giving false invoice; selling as cattle food any article which contains any ingredient deleterious to cattle or worthless for feeding purposes. Penalty for contravention of Act £20.

FIRE—FALSE ALARMS OF.

By the False Alarms of Fire Act, 1895 (58 & 59 Vict. c. 28), any person knowingly giving or causing a false alarm of fire to be given to any brigade outside the metropolitan area, whether by means of street alarm, message or otherwise, is liable to a penalty of £20.

FIRST OFFENDERS ACT, 1887.

(50 & 51 VICT. c. 25.)

This Act was passed for the purpose of endeavouring to bring about the reformation of persons convicted of first offences without subjecting them to imprisonment, regard being had to—

(1) The youth, character, and antecedents of the offender ;

(2) The trivial nature of the offence, and any extenuating circumstances under which the offence was committed.

A person convicted for the first time of larceny or false pretences, or any other offence punishable with not more than two years' imprisonment, may be released on entering into recognisances to come up for judgment when called upon.

FISHERIES.

The duty of the constabulary regarding fisheries should be confined to the protection of public rights. The police should take notice of and report such breaches of the fishery laws as affect public interest, and of non-observance of close season, destruction of spawn, etc.

FRESHWATER FISHERIES (*f*).

The statutes known as the Salmon and Freshwater Fisheries Acts, 1861 to 1892, consist of—

The Salmon Fisheries Acts, 1861, 1865, 1873, 1876, and Amendment Acts passed in 1863, 1870, and 1879.

The Elver Fishing Act, 1876 ; and the Fisheries (Dynamite) Act, 1877.

The Freshwater Fisheries Acts, 1878, 1884, 1886.

The Salmon and Freshwater Fisheries Acts, 1886 and 1892 ; and the Fisheries Act of 1891.

The Freshwater Fisheries Acts, 1878 and 1884, are to be read as one with the Salmon Fisheries Acts, 1861 to 1876, and the provisions of the Acts of 1865 and 1873, as to the formation of

(*f*) The control and administration of the legislation relating to fishing industries has been handed over to the Board of Agriculture and Fisheries. See title "BOARD OF AGRICULTURE AND FISHERIES," *ante*.

fishery districts and the proceedings and powers of conservators, are to extend to all waters frequented by freshwater fish. Certain sections of the Act are not to apply to waters in Norfolk and Suffolk which are placed under the Norfolk and Suffolk Fisheries Act, 1877.

Fishing without licence.—Any person fishing in a fishery district with a rod and line for salmon, trout, or char without a proper licence, is liable to a penalty of £5 (Salmon Fishery Act, 1865, s. 35).

The public have no right to fish in a river made navigable by Act of Parliament but not tidal (the Itchen in Southampton), although they have fished in it as of right for many years without interruption. The jurisdiction is not ousted by a *bonâ fide* claim to such right with the view of having the question tried by an action, as such a right cannot *exist* at law; the navigation is private property subject to certain limited rights on the part of the public (*Hargreaves* v. *Diddams* (1875), 40 J. P. 167; L. R. 10 Q. B. 582).

"That is called an arm of the sea where the sea flows and reflows and so far only as the sea flows and reflows," "and only in such waters is there *primâ facie* a right of fishing common to all" (Hale, *De jure Maris*, p. 12).

Fishing with lights, spears, stroke hall, snatch, etc. (for purpose of foul hooking fish), penalty, £5; and using roe for bait, penalty, £2.

Fixed engine.—No fixed engine shall be used for purpose of taking salmon in any inland or tidal water.

Unclean fish.—No person shall kill or take unclean (*g*) or unseasonable salmon, trout, or char. Penalty, £5.

Young of salmon.—No person shall wilfully take or destroy the young of salmon. Penalty, £5.

Spawning.—If any person wilfully disturbs or attempts to catch salmon when spawning or when on or near their spawning beds. Penalty, £5.

Annual close season.—No person shall fish for or attempt to catch salmon between September 1st and February 1st, both inclusive, called the "close season"; except with a rod and line between September 1st and November 1st. Penalty, £5 and forfeiture of fish.

(*g*) *Unclean fish.*—There is no definition of term, but it is generally taken to apply to fish just about to spawn or which have recently spawned (49 J. P. 810).

The annual close season and weekly close time may be varied by byelaws confirmed by Secretary of State, and byelaws may be made as to times for killing trout (Act of 1876, s. 4).

No person shall fish for or attempt to catch trout or char between October 2nd and February 1st, inclusive. Penalty, £2 and forfeiture of fish.

Weekly close time.—No person shall fish for, catch, or kill by any means other than a rod and line any salmon between noon on Saturday and 6 a.m. on Monday. Penalty, forfeiture of fish and fine £5.

Eel baskets.—No person between January 1st and June 24th is to hang, fix, or use in any salmon rivers any baskets, traps, nets, or devices for catching eels or their fry (*h*), or place in any inland water any device to catch or obstruct fish. Penalty, £2 a day.

Interpretation.—"*Freshwater fish.*"—The expression freshwater fish in s. 11 of the Freshwater Fisheries Act, 1878 (41 & 42 Vict. c. 39), includes all fish (other than eels and pollan, trout and char) which live in fresh water except those which migrate to and from the open sea, and in the construction of the Freshwater Fisheries Act, 1884, which is to be construed as one with the Freshwater Fisheries Act, 1878, the expression means any fish living permanently or temporarily in fresh water exclusive of salmon.

"*Tributaries.*"—A water company's reservoir discharging its surplus water into a stream is not a tributary, nor is a reservoir formed by an embankment constructed across a river (*George* v. *Carpenter*, [1893] 1 Q. B. 505; 57 J. P. 311).

Close time.—The period between March 15th and June 15th, both inclusive, shall be a close season for freshwater fish.

[As to illegally taking fish in private waters, see Larceny Act, 1861, s. 24, APPENDIX, *post.*]

If any person during the close season fishes for or attempts to catch any freshwater fish in any river, lake, tributary, stream or other water connected with or communicating with such river. Penalty, 40*s* (41 & 42 Vict. c. 39, s. 11 (2)).

Nothing in the sub-section shall apply to the owner of any several or private fishery where trout, char, or grayling are specially preserved, destroying within such fishery any freshwater fish other than grayling. Persons authorised by owner are also exempted.

(*h*) So much of this section (s. 15, 42 & 43 Vict. c. 26) as prohibits the taking of "elvers" or the fry of eels is repealed by 39 & 40 Vict. c. 34, s.1.

Poison.—Any person who unlawfully and maliciously puts any poison, lime, or noxious material in any water frequented by fresh-water fish with intent thereby to destroy same shall be liable to fine of £20 (Act of 1884, s. 7). Penalty in cases where salmon frequent waters, £5 (Salmon Fisheries Act, 1861), or may under Malicious Damages Act, 1861 (s. 32), be indicted for misdemeanor.

SEA FISHERIES.

In some sea fisheries districts the police are instructed to assist in enforcing byelaws made under the Sea Fisheries Regulations Act, 1888 (51 & 52 Vict. c. 54).

SHELL FISH.

Fisheries (Oyster, Crab, and Lobster) Act, 1877 (40 & 41 Vict. c. 42).

Crabs.—No person shall take, have in possession, sell, expose for sale, consign for sale, or buy for sale—

(1) any edible crab which measures less than four inches and a quarter across the broadest part of the back; or

(2) any edible crab carrying any spawn attached to the tail or other exterior part of the crab, whether known as "berried crab," "seed crab," "spawn crab," "ran crab," or by any other name; or

(3) any edible crab which has recently cast its shell.

Penalty, £2 first offence, £10 second offence and forfeiture of crabs (s. 8 of Act).

An exception is made where the crabs are intended for bait.

All crabs protected by the above section may be searched for, seized, and disposed of by any authority lawfully acting under any Act, charter, or byelaw, or by any person appointed by that authority, in like manner as if such crabs were found to be diseased or unfit for the food of man (s. 12).

Lobsters.—No person shall take or have in possession, sell, etc. any lobster which measures less than eight inches from the tip of the beak to the end of the tail when spread, as far as possible, flat. Fine £2, and £10 for second offence (s. 9).

Oysters.—A close season is provided for oysters: for oysters known as "deep sea oysters," between June 15th and August 4th; for other oysters, between May 14th and August 4th (s. 4).

The provisions as to search, inquiry, etc., in case of crabs apply also to lobsters and oysters (s. 12).

Cockles, etc.—47 & 48 Vict. c. 27 (Sea Fisheries Act, 1884), enables the Board of Trade to make orders regarding cockles and mussels.

Bait, etc.—44 & 45 Vict. c. 11 (Sea Fisheries (Clam and Bait Beds) Act, 1881) was passed to provide for the protection of clam and bait beds.

FOOD AND DRUGS (SALE OF).

Sale of Food and Drugs Acts, 1875 to 1899, include the principal Act of 1875, the Amendment Act of 1879, the Act of 1899, and the Margarine Act of 1887 (s. 28, Act of 1899).

The administration of the Acts is entrusted to local authorities, concurrent powers being given in certain cases to the Local Government Board and Board of Agriculture and Fisheries.

The principal Act and the Amendment Act (*i*), although short and concise, require, owing to a large amount of litigation on technical matters, the careful attention of officers of police who may be called upon to discharge duties as inspectors under the Acts.

The provisions of the principal Act (38 & 39 Vict. c. 63) may be tabulated as follows :

1. Description of offences, ss. 1—10.
2. As to analyst and analysis, ss. 10—19.
3. Proceedings against offenders, ss. 20—28.
4. Expenses, s. 29.
5. Provisions as to tea, s. 30.
6. Interpretation, etc. (*k*).

The term "food" shall include any article used for food (*l*) or drink by man other than drugs or water (*m*); and the term "drugs" shall include medicine for internal or external use (s. 2).

The Amendment Act of 1879 deals with technical defences (s. 2); sale of milk in transit (s. 5); sale of spirits (s. 6); expenses, etc. See p. 269.

The Margarine Act of 1887 deals with the sale of that commodity (see p. 271), and the Sale of Food and Drugs Act, 1899, provides against importation of agricultural and other produce

(*i*) See p. 269.

(*k*) See p. 268.

(*l*) The term food is now extended (by Act of 1899), and includes "any article which ordinarily enters into or is used in the composition or preparation of human food, and shall also include flavouring matters and condiments." Baking powder now comes within the amended statute. See *James* v. *Jones* (1894), 58 J. P. 230.

(*m*) Provision is made for analysis of water used in manufacture of drinks by s. 70 of Public Health Act, 1875.

insufficiently marked, extends the Margarine Act of 1887, and amends certain provisions of the principal Act and the Amendment Act. See p. 272.

The Fertilisers and Feeding Stuffs Act, 1893, is a kindred Act, dealing with the sale of fertilisers and food for cattle.

The Bread Acts of 1822 and 1836 are still in force, and relate to the adulteration of flour and bread. See title "Bread Acts," *ante*.

1. Offences.

(Ss. 1—10, Act of 1875.)

Injurious ingredients—Food.—"No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food (*n*) with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed. . . . ." Penalty, first offence, not exceeding £50; second offence, misdemeanor, six months' imprisonment with hard labour (s. 3).

Drugs.—Similar provisions and penalties apply to mixing, etc. (except for the purpose of compounding) any drug or selling same so mixed, etc. (s. 4).

Exemption—Absence of knowledge.—No person shall be liable to be convicted under foregoing sections if he can show that he did not know of the articles sold being so mixed, etc., and that he could not with reasonable diligence obtain that knowledge (s. 5).

Selling to prejudice of purchaser.—No person (*o*) shall sell to the prejudice (*p*) of the purchaser (see also p. 269, *post*) any

(*n*) *Peas.*—As to colouring preserved peas, see *Friend* v. *Mapp* (1904), 68 J. P. 589; also *Hull* v. *Horswell* (1904), 68 J. P. 589. The South London Quarter Sessions held on appeal that a one pound bottle of peas containing three grains of sulphate of copper, used by the manufacturers for purpose of fixing or restoring the natural colour of the peas, rendered the article injurious to health (*Summers* v. *Grist* (1896), 60 J. P. 346).

(*o*) A servant who sells on behalf of his master is liable to be convicted. Whether the master is liable depends on whether he has guilty knowledge (*Hotchin* v. *Hindmarsh*, [1891] 2 Q. B. 181; 55 J. P. 775).

(*p*) The offence consists in fraudulently handing to the buyer something to his prejudice; pecuniary prejudice is not, however, absolutely essential (*Hoyle* v. *Hitchman* (1879), 43 J. P. 431).

The true construction is (*per* Cockburn, L.C.J.), that where the seller sells a particular and specific article, altered by admixture, he must be

article of food or any drug which is not of the nature, substance, and quality (see also p. 269, *post*) of the article demanded by such purchaser. Penalty, £20 (s. 6).

Proviso.—Provided that an offence shall not be deemed to be committed in the following cases, viz. :

(1) Where any matter or ingredient not injurious to health has been added to the food or drug for its production or preparation as an article of commerce, in a fit state for carriage or consumption, and not (*q*) fraudulently to increase bulk, weight, or measure of same, or conceal the inferior quality.

(2) Where the drug or food is a proprietary medicine (*r*) or the subject of a patent in force and so supplied.

(3) Where the food or drug is compounded (*s*) as mentioned in Act.

taken to have done so to the prejudice of the customer unless the same be brought to the customer's knowledge (*Sandys* v. *Small* (1878), 42 J. P. 550 ; 47 L. J. 115).

In *Sandys* v. *Markham* (1877), 41 J. P. 52, justices refused to convict for selling "mustard" without a label, the defence set up being that mustard of commerce or table mustard which is usually sold as mustard is a mixture of mustard-seed flour, wheaten flour, turmeric, and cayenne pepper, which are not injurious to health, and such mustard is considered by many persons more palatable than pure mustard ; and proof was given that the lowest of three qualities manufactured by an eminent firm was of the same mercantile value and price as the pure flour of mustard-seed, so that a purchaser could not be said to be "prejudiced" by receiving the compound. The court remitted the case to the justices to re-state it more precisely as to the trade practice alleged, and whether the seller in their view of the facts came within the first sub-section of the proviso as to this section. Upon this point *Horder* v. *Grainger* (1880), 44 J. P. 188 ; 68 L. T. 371, may be referred to.

The "article demanded" must be held to be the article meant by an ordinary purchaser to be obtained not in any scientific definition (*Morton* v. *Green* (1881), Reports of Cases in Courts of Justiciary, vol. iii., p. 37). "Milk" was asked for, and skimmed milk 60 per cent. deficient in butter fat was supplied. The Queen's Bench Division held defendant had not committed an offence under this section, as skimmed milk satisfied the demand made (*Lane* v. *Collins* (1885), 49 J. P. 89 ; 14 Q. B. D. 193 ; 4 L. J. 76 ; 33 W. R. 365 ; 52 L. T. 257).

It is to be no defence to allege that the purchaser having bought for analysis only was not prejudiced by the sale (Food and Drugs Amendment Act, 1879, s. 2).

(*q*) See *Pashler* v. *Stevenitt* (1877), 41 J. P. 136 ; *Sandys* v. *Markham* (1877), 41 J. P. 52 ; *Pearks & Co.* v. *Knight*, [1901] 2 K. B. 825 ; 65 J. P. 822.

(*r*) Sale of these medicines is entirely withdrawn from the operation of the Act, the remedy being left to the common law and the Merchandise Marks Act, 1862.

(*s*) There is no direction in the Act how an article is to be compounded ; the clause in the Bill providing for compounding according to the British Pharmacopœia was struck out in the House of Lords.

(4) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Compound article.—No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand (*t*) of the purchaser. Penalty, £20 (s. 7).

Protection by label.—Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of any article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its weight, bulk, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice by label (*u*), distinctly and legibly written or printed on or with the article or drug to the effect that the same is mixed (s. 8). See also s. 12, Act of 1899, *post*.

False label.—Every person who shall wilfully give a label with any article sold by him, which shall falsely declare the article sold, shall be guilty of an offence. Penalty, £20 (s. 9).

Warranty.—As to written warranty, see p. 267, *post*. A warranty or invoice shall not be available as a defence unless the defendant has given *written* notice to the purchaser of his intention to rely on same. See p. 267, *post*.

As to discharge of defendant, see s. 25, Act of 1875, p. 267, *post*.

Abstracting to affect quality.—"No person shall, with the intent that the same may be sold in its altered state without notice,

(*t*) See *White* v. *Bywater* (1887), 19 Q. B. D. 582; 51 J. P. 340 (purchase of tincture of opium below standard of British Pharmacopœia).

(*u*) The label is not a protection against fraud. When an article is sold in a labelled package, the justices must find whether the mixture is intended for a fraudulent purpose. A mixture 60 per cent. coffee and 40 per cent. chicory, sold at the *price of pure coffee*, was found to be a fraudulent mixture (*Liddiard* v. *Reece* (1880), 44 J. P. 233). The label is made by the statute sufficient notice, but if verbal notice be given before the sale the seller cannot be legally convicted (*Sandys* v. *Small*, *ante*). The seller of a box of margarine fully labelled, but inclosed in a brown paper wrapper not so labelled, was protected, but costs were given against him (*Toler* v. *Bishop* (1896), 60 J. P. 9).

Where a label was given with "Epps' Cocoa," which did not distinctly or legibly state the cocoa was mixed, the type being so small that it required a magnifying glass, the justices convicted, but decision was reversed (*Attfield* v. *Tyler* (1893), 57 J. P. 357).

abstract (*x*) from an article of food any part of it so as to affect injuriously its quality, substance, or nature (*y*), and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds" (s. 9).

2. ANALYST AND ANALYSIS.

(Ss. 10—19, Act of 1875.)

Sections 10 and 11 of Act of 1875 provide for appointment, etc., of a public analyst (*a*).

Private purchaser.—Under s. 12 every purchaser of an article of food or of a drug in any place for which an analyst has been appointed is entitled on payment of a fee of ten shillings and sixpence to have such article analysed [where there is no analyst for the district, the sample may be submitted to the analyst of another place].

Public officer.—Section 13 relates to the obtaining of sample by public officer:

"Any medical officer of health" (see also p. 269, *post*), "inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable (*b*) under the direction and

(*x*) When milk is sold with the cream abstracted notice should be given, otherwise vendor may be liable. See *Lane* v. *Collins* (1885), 49 J. P. 89; 4 L. J. 76.

A report of an investigation into the composition of genuine milk in August, 1893, by the chemical officers at Somerset House, was sent March, 1894, to local authorities. The results show that the non-fatty solids of milk from 273 cows varied from 7·52 per cent. (a shorthorn) to 10·4 per cent. (an Ayrshire), and the fat varied from 2·43 per cent. (a shorthorn) to 5·97 per cent. (a Jersey).

In upholding a conviction that milk containing 22 per cent. less of fat than natural milk was not of the nature, substance, and quality demanded, the Queen's Bench Division declined to decide that to sell poor milk is an offence as a matter of law (*Bakewell* v. *Davies*, [1894] 1 Q. B. 296; 58 J. P. 228).

(*y*) See also s. 2 Sale of Food and Drugs Act Amendment Act, 1879, p. 269, *post*.

(*a*) Under s. 3 of the Sale of Food and Drugs Act, 1899, every local authority is required to appoint a public analyst, and the Local Government Board or Board of Agriculture and Fisheries may act if the local authority make default, and may direct analysis to be made.

(*b*) It is not necessary to prove as a condition precedent that the officer was directed by the local authority appointing him to prosecute (*Hale* v. *Cole* (1891), 55 J. P. 376).

at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same (*c*) to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place; and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed (*d*), analyse the same, and give a certificate to such officer, wherein he shall specify the result of the analysis" (s. 13).

The certificate (*e*) shall be in the form set forth in the Schedule to the Act or to the like effect (s. 18).

Dealing with sample.—The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith (*f*) notify to the seller or his agent selling the article his intention to have the same analysed by the (*g*) public analyst, and shall divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, deliver

(*c*) The inspector is not bound to submit for analysis the whole of the sample taken (*Rolfe* v. *Thompson* (1892), 56 J. P. 425).

(*d*) In the case of a perishable article proceedings must be taken within twenty-eight days from the time of the purchase for test purposes, and the summons is not to be returnable in less than seven days from service (Sale of Food and Drugs Act Amendment Act, 1879, s. 10).

(*e*) The certificate will be *primâ facie* evidence for the prosecution, but the analyst is to be called if required by the defendant (*Harrison* v. *Richards* (1881), 45 J. P. 552).

(*f*) Where the *actual buyer* handed the article to the inspector, who within two minutes went into the shop and divided the article and gave the notice, it was sufficient (*Stace* v. *Smith* (1880), 45 J. P. 141; *Garforth* v. *Esam* (1892), 56 J. P. 521). S., an inspector, standing outside an inn, sent B., a constable, to buy gin. Both went to M., the innkeeper, two minutes after the constable's return, and told M. the gin was bought for analysis and divided:—*Held*, justices were wrong in holding the object of purchase was not notified "forthwith."

(*g*) It is not sufficient to state the article is purchased for the purpose of analysis; the purchaser must add the words "by the public analyst," the use of these words being a condition precedent to conviction (*Barnes* v. *Chipp* (1878), 47 L. J. 85), but it is only necessary for the seller to have notice that the analysis is to be made by an official person, and the substitution of the words "county analyst" is immaterial (*Wheeker* v. *Webb* (1887), 51 J. P. 661).

one (*h*) of the parts to the seller or his agent. He shall afterwards retain one of the said parts (*h*) for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst (s. 14).

Section 15 is repealed by Act of 1899 (Sched.).

Sending articles to analyst.—"If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may (*i*) be forwarded to the analyst through the post office as a registered parcel (*k*), subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article: and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be" (s. 16).

Analyst is required to report quarterly to the authority appointing him, such reports to be subsequently transmitted to Local Government Board (s. 19).

Refusing to sell articles for analysis. — If any such (*l*) officer, inspector, or constable as above described shall apply to purchase any article of food or any drug exposed to sale, or on sale by retail on any premises or in any shop or stores, or in any street or open place of public resort (as amended by 42 & 43 Vict. c. 30, s. 5), and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell (*m*), the same to such officer, inspector or constable, such person shall be liable to a penalty not exceeding ten pounds (s. 17).

Similar penalty attaches to refusal to allow sample of milk to be taken for analysis (Amendment Act, 1879 (s. 4)). See p. 270.

(*h*) These parts may have to be produced at the hearing if required (s. 21).

(*i*) On a question raised as to whether sending the article by rail is a legal delivery to the analyst, counsel (*Mr. Glen*) advised that such delivery is compliance with the Act.

(*k*) 54 & 55 Vict. c. 46, s. 11.

(*l*) The inspector is not bound to produce his authority unless it be demanded (*Payne* v. *Hack* (1893), 58 J. P. 165; 95 L. T. 83).

(*m*) The general rule is that a shopkeeper is not bound to sell his wares to any person; until he has assented to the bargain he can always change his mind; it is, therefore, not competent to one of the public to go into a shop and insist on buying anything. It is only one of the above officers who can do so (39 J. P. 627).

By s. 18 of Act of 1899, no person shall be bound to sell except *in the unopened tin or packet* any article of food so exposed for sale.

3. Proceedings against Offenders.

(Ss. 20—28, Act of 1875.)

If from certificate of analyst it appears that an offence against some one of the provisions of this Act has been committed, the person (*n*) causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser in a summary manner, as prescribed by the Summary Jurisdiction Acts. Every penalty may be reduced or mitigated according to the judgment of the justices (s. 20) (*o*).

Written warranty. — "If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written (*p*) warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence" (s. 25).

As to notice of warranty—for defence, see p. 263, *ante*.

(*n*) The power to proceed is limited to this person, and his name must appear on the summons. Where the sample had been obtained by a deputy of the inspector and handed to the analyst by the inspector the proceedings were rightly taken in the name of the inspector, and ss. 4, 12, were sufficiently complied with (*Horder* v. *Scott* (1880), 44 J. P. 520, 795; 49 L. J. 78). The actual purchaser in such a case is the inspector (*Stace* v. *Smith* (1880), 45 J. P. 141).

(*o*) *Summons—limitation of time.*—Notwithstanding the provisions of s. 20 the summons shall be served upon the persons charged with violating the provisions of the Act within a reasonable time, and in the case of a perishable article not exceeding *twenty-eight days* from the time of the purchase from such person for test purposes. [See also s. 19, Act of 1899]. The food or drug for the sale of which the seller is rendered liable to prosecution, and particulars of the offence or offences against the Act of which the seller is accused, and also of the name of the prosecutor shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned (Food and Drugs Act Amendment Act, 1879, s. 10).

(*p*) There must be an express written warrant; an invoice containing a mere description of the article (as "Lard No. 1") is insufficient (*Rook* v. *Hopley* (1878), 42 J. P. 551). An invoice written and delivered at the time of sale of butter contained the words "guaranteed pure":—*Held*, it was a sufficient warranty (*Hawkins* v. *Williams* (1895), 59 J. P. 533).

To forge certificate of warranty is a misdemeanor, and renders offender liable to two years imprisonment (s. 27).

To give a false warranty is an offence (Penalty, £20) under Act of 1899 (s. 20).

Analysis by chemical officers of the Crown.—The justices before whom any complaint may be made, or the court before whom any appeal may be heard under this Act, may upon the request of either party in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate to such justices of the result (*q*) of the analysis ; and the expenses of such analysis shall be paid by the complainant or the defendant as the justices may by order direct (s. 22).

4. EXPENSES.

(Act of 1875.)

The expenses of executing the Act shall be borne as regards England (exclusive of metropolis and city of London) by the county rate in counties and the borough rate in boroughs (s. 29).

5. TEA.

(Act of 1875.)

Section 30 provides that tea shall be examined by the Customs on importation. "Tea" to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

Falsely pretending to sell tea mixture of a worthless character as good tea and selling same at the price of good tea is a "false pretence" (41 J. P. 295).

6. INTERPRETATION, ETC.

See s. 2, Act of 1875, also ss. 25 and 26 Act of 1899.

MILK.

The Sale of Food and Drugs Acts contain a number of provisions as to sale of milk, cream, etc., and a number of Circulars have been issued on the subject. See ss. 3—5 of Amendment Act, 1879 ; ss. 9, 10, of Act of 1899, pp. 269—271.

(*q*) The reference under this section is for the purpose of obtaining the result of the analysis merely ; therefore the opinion of the chemical officers as to what is the minimum percentage of fat in new milk cannot be received as evidence (*Dargie* v. *Dunbar* (1884), 11 Ct. Sess. Cas. 4th series (Justiciary), 37).

The Act of 1899 (s. 11) contains provisions regarding condensed, separated or skimmed milk, and impoverished milk or cream.

See s. 10 regarding division of sample taken in course of delivery.

Sale of Milk Regulations, 1901.—Where a sample of skimmed or separated milk (not being condensed milk) contains less than nine per cent. of milk solids, it shall be presumed that the milk is not genuine.

A Circular in connection with this Order was issued December 28th, 1901, in which it was intimated that local authorities might exercise their discretion as to instituting proceedings; the practice of adding gelatin to cream was referred to and the desirability of uniformity of procedure in collecting and retaining samples of milk: also as regards samples of butter. See Circular, July 13th, 1903.

Butter.

Where the proportion of water in a sample of butter exceeds 16 per cent. it shall be presumed that the butter is not genuine by reason of the excessive amount of water therein. (Sale of Butter Regulations, 1902.)

SALE OF FOOD AND DRUGS ACT AMENDMENT ACT, 1879. (42 & 43 Vict. c. 30.)

Amendment.—"In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser (*r*) any article of food or any drug which is not of the nature, substance, and quality (*s*) of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question (*t*), though defective in nature or in substance or in quality, was not defective in all three respects" (s. 2).

Public officer obtaining sample (milk).—"Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable (*u*) under the direction and at the cost of the local authority appointing such officer (*r*), inspector,

(*r*) See p. 261, *ante*.
(*s*) See p. 262, *ante*.
(*t*) Superseding *Davidson* v. *Macleod* (1877), 42 J. P. 43.
(*u*) This description is similar to that given in s. 13 of principal Act. See note (*a*), p. 264, *ante*.
(*r*) Proceedings under this amending statute cannot be taken by a purchaser or consignee or by others than specified officers (s. 3), who alone are authorised to take the samples (*Harris* v. *Williams* (1889), 6 T. L. R. 47).

or constable, or charged with the execution of this Act, may procure (*x*) at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act" (s. 3).

"The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds" (s. 4).

"Any street (*y*) or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act" (s. 5).

Spirits.—"In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy (*z*), whisky, or rum, or thirty-five degrees under proof for gin" (*a*) (s. 6).

Beer.—As to arsenic in beer, see *Palmer* v. *Noblett* (1901), 65 J. P. 646.

(*x*) An inspector has no power to take a sample outside his own district (*McNair* v. *Cave*, [1903] 1 K. B. 24; 67 J. P. 50).

(*y*) Any person selling milk or cream from vehicle or can in any highway or place of public resort shall have his name and address conspicuously inscribed on the vehicle or receptacle (s. 9, Act of 1899).

(*z*) *Brandy.*—The question, What is brandy? has lately exercised the courts, and legislation has occurred regarding the sale of spirit designated "brandy," which on analysis was shown to have but little or no juice of the grape in its composition. A recent case, reported in the Times, February 1st, 1905, heard at the West London Police Court (Fulham Borough Council against certain local licensed victuallers), disclosed that in liquor sold as brandy from 55 to 70 per cent. of the spirit was not derived from the grape, but was a "grain" spirit. It was proved that grain spirit could be bought for from 8½*d.* to 1*s.* 4*d.* a gallon, whereas the cheapest spirit derived from wine stood at 5*s.* per gallon. The cases of *Webb* v. *Knight*, decided in 1877, and *Wilson* v. *Wilson*—a Scotch case—were referred to. In another case decided at Bow Street Police Court (Times, February 1, 1905, and Justice of the Peace, February 11, 1905), it was stated that the standard for "brandy" fixed by analyst was 80 parts by weight of "ethers" per 100,000 parts in volume. The finest brandy sometimes contained as much as 160 parts of "ethers."

(*a*) This section of the amending statute was passed to meet difficulties in *Pashler* v. *Stevenitt* (1877), 41 J. P. 136, and other cases. "Proof" spirit was proved to contain about one half part of water and one half pure alcohol; that the usual quality of gin retailed varies from proof to 20 per cent. under, and the appellant's gin (*Pashler* v. *Stevenitt* (1877), 41 J. P. 136) was found to be 44 per cent. under proof. The Queen's Bench Division held that this was so great a difference that the justices were fairly justified in

Boroughs, liberties, etc.—Provision is made for boroughs with separate police establishments being assessed to the county rate (s. 9).

Every liberty having a separate quarter sessions (cinque ports excepted) shall be deemed to be a county within meaning of Act (s. 7).

S. 10, as to "limitation of time for proceedings," is repealed by Act of 1899 (Sched.).

Margarine.

Under the Margarine Act of 1887 (50 & 51 Vict. c. 29), any officer authorised to take samples under the Sale of Food and Drugs Act, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purpose of analysis samples of any butter (*b*), or substances purporting to be butter, which are exposed for sale, and are not marked "margarine" as provided by this Act, and any such substance not being so marked shall be presumed to be exposed for sale as butter (s. 10).

Penalty.—Any person dealing in margarine, whether wholesale or retail, as manufacturer, importer, consignor or consignee, commission agent, or otherwise, found guilty of an offence under this Act, on summary conviction is liable to fine, not exceeding £20 for first offence, £30 for second, and £100 for any subsequent offence (s. 4).

Exemption.—An employer when charged with an offence against this Act is entitled to have any other person he may lay an information against brought before the court at the hearing. And, on the

finding that it was fraudulently mixed to increase the bulk. This case was followed by *Webb* v. *Knight* (1878), 2 Q. B. D. 530. In *Sandys* v. *Small* (1877), 42 J. P. 550, a publican who had a printed notice put up, "All spirits sold here are mixed" (38 & 39 Vict. c. 63, ss. 8, 9), had not committed an offence in selling whisky mixed with 30 per cent. of water. In a later case, where rum contained 19 per cent. of water beyond the limit, and a notice was stuck up in the house to the effect that spirits sold there were diluted, the Queen's Bench Division held the mere notice itself was not a protection, and the justices should have determined whether the purchaser was prejudiced (*Morris* v. *Askew* (1893), 57 J. P. 724). An innkeeper sold gin containing 40½ per cent. of water, and said, "This we sell to the public, and there is our notice," which stated that all spirits were diluted and no strength guaranteed. The Queen's Bench Division held justices were wrong in convicting. As notice of dilution was given to the purchaser, it was not a sale to his prejudice, and no offence was committed (*Gage* v. *Elsey* (1883), 10 Q. B. D. 518; 47 J. P. 391). See also *Palmer* v. *Tyler* (1897), 61 J. P. 389.

(*b*) "Butter" shall be made exclusively from milk and cream.

"Margarine" consists of all substances in imitation of butter, whether mixed with it or not (s. 3).

As to "margarine cheese," see s. 1 of Act of 1899, p. 272, *post*.

offence being proved, if he can show that he took all needful precautions to enforce the Act, and that the other person committed the offence without his knowledge or connivance, the said other person shall be convicted, and the employer exempted (s 5).

Marking.—Every package of margarine (*c*), whether closed or open, must be durably marked "margarine" on top, bottom, and sides in printed capital letters, clearly visible to the purchaser (*d*), and if sold in wrappers, the latter must be printed "margarine" (s. 6).

Any person accused under this Act can be discharged if he can show he bought the article in question as butter with written warranty, or invoice to that effect, and that he sold it believing it to be butter, and in the same state as he bought it. He must, however, to obtain costs, give notice that he will rely on the above defence (s. 7).

All margarine, whether foreign or not, must, when sent by public conveyance, be consigned as "margarine," and an authorised person may, on reasonable suspicion, obtain samples for analysis (s. 8).

Costs, proceedings, etc.—Costs and expenses may be made good to the prosecutor out of penalties recovered (s. 11).

Proceedings under this Act will be in accordance with the Act of 1875 (s. 12).

Margarine manufactories must be registered.

SALE OF FOOD AND DRUGS ACT, 1899.

(62 & 63 VICT. C. 51.)

S. 1 provides precautions against importation of agricultural and other produce insufficiently marked. Margarine or margarine cheese, adulterated or impoverished butter, milk or cream, or condensed, separated or skimmed milk, any adulterated or impoverished article of food, when imported into the United Kingdom, must have the package or can wherein contained conspicuously marked with a descriptive label. Penalty, first offence, £20, second offence, £50, subsequent offence, £100.

The word "importer" shall include any person who, whether as owner, agent, or broker, is in anywise entitled to the custody or control of, the

(*c*) By the Act of 1899 similar provision shall apply to "margarine cheese."

(*d*) For the penalty to be enforced, the substance must be "exposed" so as to be visible to customers (*Crane* v. *Lawrence* (1890), 54 J. P. 471). See also *McNair* v. *Horan* (1904), 68 J. P. 518.

Selling in "conjunction" with another article as bread and butter in restaurant, is not "exposing *margarine* for sale" (*Moore* v. *Pearce's Dining Rooms*, [1895] 2 Q. B. 657; 59 J. P. 805, Treat. 690).

article; prosecutions for offences under this section shall be undertaken by the Commissioners of Customs, who shall act in accordance with directions given by the Treasury after consultation with the Board of Agriculture and Fisheries.

"For the purposes of this section an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature.

"Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such quantity as not to render the article injurious to health."

S. 2 empowers Local Government Board or Board of Agriculture and Fisheries to sample articles of food.

S. 3 empowers Local Government Board or Board of Agriculture and Fisheries to act in default of local authority.

S. 4.—Power for Board of Agriculture and Fisheries to make regulations as to analysis of milk, cream, butter or cheese.

S. 5 extends the provisions of the Margarine Act, 1887, to margarine cheese.

S. 6 requires that the brand or mark required on any package shall be on the package itself and not solely on a label, ticket, or other thing attached thereto.

The letters on the paper wrapper shall be capital block letters not less than half an inch long, and no other printed matter shall appear on the wrapper.

S. 7 gives power to officer of Board of Agriculture and Fisheries to enter any margarine manufactory for purpose of inspection.

S. 8. It shall be unlawful to manufacture, sell, or import any margarine, the fat of which contains more than ten per cent. of butter fat.

S. 9.—Every person who, himself or by his servant, in any highway or place of public resort sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle his name and address. Penalty for contravention, £2.

S. 10.—In the case of a sample taken of milk in course of delivery, or of margarine or margarine cheese forwarded by a public conveyance, a portion of the sample shall be forwarded to the consignor.

S. 11.—Every tin or other receptacle containing condensed, separated or skimmed milk must bear a label clearly visible to the purchaser on which the words "Machine-skimmed Milk," or "Skimmed Milk," as the case may require, are printed in large and legible type.

S. 12.—The notice on label (required by Act of 1875, s. 8) is not to be obscured by other matter written or printed on label. The section contains a proviso exempting label or trade mark in use before commencement of Act.

S. 13.—Amendment of s. 14 of Act of 1875.

S. 14.—The provisions of ss. 3 & 4 of Act of 1879 (taking of samples of milk in course of delivery), shall apply to every other article of food; but no samples shall be taken under this section except with the consent of the purchaser or consignee.

S. 15.—Amendment of s. 16 of Act of 1875.

S. 16 prescribes penalties for obstruction of officer in discharge of his duties, or for attempt to bribe officer (£20 to £100).

S. 17.—As to penalties in case of second or subsequent offences which may extend to imprisonment for three months.

By s. 18 articles sold in tins or packets can be sold in the unopened tin or packet.

S. 19.—Prosecutions in respect of articles purchased for test purposes shall not be instituted after the expiration of twenty-eight days from the time of the purchase.

S. 20.—(1) A warranty or invoice shall not be available as a defence unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of same with a written notice stating that he intends to rely on the warranty or invoice.

The section contains various provisions as to proceedings against the warrantor—false warranty, etc.

S. 21.—As to duty of court to send article for analysis to the Commissioners of Inland Revenue if required.

S. 22.—Provisions as to certificates of analysis.

Ss. 23, 24.—Application of Act to Ireland and Scotland.

Ss. 25, 26.—Interpretation clause—

The expression "margarine cheese" shall mean any substance prepared in imitation of cheese, which contains fat not derived from milk:

The expression "cheese" means the substance usually known as cheese, containing no fat derived otherwise than from milk:

The expression "food" shall include every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and shall also include flavouring matters and condiments.

FORCIBLE ENTRY.

Everyone commits the misdemeanor called "forcible entry" who enters upon any lands or tenements other than his own, in a violent manner, whether such violence consists in actual force applied to any other person, or in threats, or in breaking open any house, or in collecting together an unusual number of persons for the purpose of making such entry. The statutes relating to this offence, the most recent of which is 1 James 1, c. 15, have been considered as obsolete. A question arising out of the statutes was recently before the House of Lords in the case of *Lows* v. *Telford* (1876), 40 J. P. 741.

FORGERY.

The statutory provisions relating to forgery are contained in the Forgery Act, 1861, c. 98.

Forgery is defined as "the fraudulent making or alteration of a writing to the prejudice of another man's right." At common law the offence of forgery is a misdemeanor. By statutes certain forgeries have been made *felonies*.

FORGERY ACT, 1861.

(24 & 25 VICT. C. 98).

(*P. S. denotes Penal Servitude; I., Imprisonment*).

FORGING HER MAJESTY'S SEALS.

S. 1.—To forge or counterfeit, or utter, etc., the Great Seal of the United Kingdom, the Queen's Privy Seal, her Royal Sign Manual, etc., and documents to which any of these are attached, is Felony. P. S. for life, or I. two years.

FORGING TRANSFERS OF STOCK, ETC.

S. 2.—To forge or alter, or knowingly utter any transfer or interest in any stock, annuity, public fund, etc., or to forge or alter, or utter any power of attorney or other authority relating to such stock, with intent to defraud or personating owner of stock, etc., is Felony (s. 3). P. S. for life, or I. two years.

S. 4.—Forging attestation to power of attorney, is Felony. P. S. for seven years, or I. two years.

S. 5.—Making false entries in book of public funds is Felony. P. S. for life, or I. two years.

S. 6.—Any clerk, servant, or other person employed or entrusted by the governor and company of the Bank of England making out false warrants shall be guilty of Felony. P. S. for seven years, or I. two years.

FORGING INDIA BONDS.

S. 7.—To forge or alter, or knowingly utter any East India bond, or security with intent to defraud, is Felony. P. S. for life, or I. two years.

FORGING EXCHEQUER BILLS, ETC.

S. 8.—To forge or alter, or knowingly utter any Exchequer bill, or endorsement thereof, or receipt for interest thereon, with intent to defraud, is Felony. P. S. for life, or I. two years.

S. 9.—Making or knowingly having any plates, dies, seals, etc., in imitation of those used for manufacturing Exchequer bills, etc., is Felony.

As is also the making or having paper in imitation of that used for such bills (ss. 10, 11).

[*These sections are extended by* 40 *&* 41 *Vict. c.* 2, *s.* 10.]

FORGING BANK NOTES.

S. 12.—To forge or alter, or to knowingly utter, any note or bill of exchange of the Bank of England or Ireland, or of any company carrying on the business of bankers, commonly called a bank note, or bill or any endorsement or assignment thereof, with intent to defraud, is Felony. P. S. for life, or I. two years.

S. 13.—To purchase, receive, or knowingly have in possession any forged bank notes, or bank bills, is Felony. P. S. for fourteen years, or I. two years.

Ss. 14—19 deal with offences of making or engraving, without lawful authority or excuse, plates for bank notes, etc.

Ss. 20—24 deal with forgery of deeds, wills, bills of exchange, etc. (*e*).

(*e*) If a person gives a cheque entirely as his own to obtain goods, the credit being given wholly to himself without relation to any third person,

CROSSINGS ON CHEQUES.

S. 25.—Whenever any cheque or draft on any banker shall be crossed with the name of the banker, or with two transverse lines with the words "and company," or any abbreviation thereof, whosoever shall obliterate or alter any such crossing, or shall utter any cheque or draft so altered, knowing the same to have been altered with intent to defraud, shall be guilty of Felony. P. S. for life, or I. two years (*f*).

Ss. 26—34 relate to various forgeries.

Debentures, records, court rolls, register of deeds, order of justices, recognizances, name of Accountant General, etc.

FORGING MARRIAGE LICENCES.

S. 35.—To forge or fraudulently alter or to knowingly utter any licence of or certificate for marriage, is Felony. P. S. seven years, or I. two years.

FORGING REGISTERS OF BIRTHS, DEATHS, ETC.

S. 36.—Whosoever shall unlawfully destroy, deface, or injure any authorised register of births, baptisms, marriages, deaths, or burials, or shall forge or fraudulently alter in any such register any entries relating thereto, or insert in any such register any false entry, or shall give any false certificate, etc., or extract therefrom or forge the seal of any such register, shall be guilty of Felony. P. S. for life, or I. two years.

S. 37.—To knowingly and wilfully insert in any copy of any register transmitted to any registrar or other officer any false entry of any matter or to unlawfully destroy, deface, or injure, or conceal, any such copy of any register, is Felony. P. S. for life, or I. two years.

DEMANDING PROPERTY UPON FORGED INSTRUMENTS.

S. 38.—Whoever, with intent to defraud, shall demand, obtain, or have delivered to any person, any chattel, money, or other property, by virtue of any forged instrument, knowing the same to be forged, is guilty of Felony. P. S. fourteen years, or I. two years.

AS TO OTHER MATTERS.

S. 39.—To forge or utter any instrument, however designated, which shall be in law a testamentary writing, or a deed or bond, or a bill of exchange or promissory note, etc., renders the person so doing liable to be indicted as an offender against this Act, and punishable accordingly.

S. 40.—As to forging in England documents made out of England.

S. 41.—Offenders may be tried in the county where they are apprehended or are in custody.

S. 42.—In any indictment for forging, altering, uttering, or putting off any instrument, such instrument may be described by any name or designation by which the same is usually known.

S. 43.—Similarly as to description of instrument—engraving.

the subscribing of it by a fictitious name does not amount to forgery (*R.* v. *Martin* (1879), 5 Q. B. D. 34; 44 J. P. 74; 49 L. J. 11). The offence is obtaining the goods by false pretences.

(*f*) This section is extended by 46 & 47 Vict. c. 55, s. 17.

S. 44.—**Intent.**—In indictments for forging, altering, uttering, etc., it shall not be necessary to allege an intent to defraud any particular person; it shall be sufficient to prove generally an intent to defraud.

S. 45.—**Criminal possession.**—Custody or possession for purposes of Act includes knowingly having the matter in the custody or possession of any other person, or in any house, field, or other place.

S. 46.—**Warrant.**—A justice of the peace may, on information on oath, grant warrant to search for forged instrument.

Ss. 47—56 deal with jurisdiction, punishment of accessories, costs, etc.

FUGITIVE OFFENDERS.

See title "EXTRADITION AND FUGITIVE OFFENDERS," *ante*.

GAME.

The killing or taking of game *in the close season*, or on a Sunday or Christmas Day, or at any time without a game certificate under 23 & 24 Vict. c. 90, s. 4 (Game Licences (*g*) Act, 1860), or the buying or selling game without being duly licensed to do so, are offences against the game laws, which are enforced by the Excise authorities and not by the police.

"Game," as defined in the Game Act, 1831, includes (*h*) "hares (*i*), pheasants, partridges, grouse, heath or moor game, black game, and bustards." Eggs of birds of game, or of swans, wild ducks, teal, or widgeon are protected under s. 24 of the Act. Penalty for every egg, 5*s*.

S. 3 prohibits the laying of poison to destroy game.

The duties of the constabulary in relation to game are very clearly defined in the "Poaching Prevention Act, 1862" (see title *post*), and are confined to *the search, etc., of suspected persons found in any highway, street, or public place*. The police are not to be employed *as watchers of game or gamekeepers*, nor are they required to prosecute in cases of game trespass. As, however, application is frequently made to them for assistance in such cases, and in cases of "night poaching," where breaches of the peace are anticipated, the following digest of the provisions of certain statutes relating to game is given for the information and guidance of constables. Killing hares (*h*) and rabbits in warrens is an offence under the Larceny Act, 1861. See also pp. 280, 281.

There is a qualified right of property in game *ratione soli*, the owner of the soil having a right to take it, and as soon as he has exercised that right the game becomes his absolute property. This was decided in *Blades* v. *Higgs* (1865), 29 J. P. 390, as to

(*g*) Game licences expire on July 31st in each year.

Penalty for sporting at unlawful season, £1 for every head of game without sporting certificate, £5.

(*h*) As to definition of "game" under other statutes, see title "POACHING PREVENTION ACT, 1862," *post*, and note (*p*), p. 280.

(*i*) Rabbits are not included.

rabbits, and in *Lonsdale* v. *Rigg* (1857), 26 L. J. Ex. 196, as to grouse. Taking away dead rabbits is larceny ; but it is otherwise when the wrongful taking and killing is one continuous act, for *it never was intended that poachers should be put on the same footing as felons;* so if the game be killed by poachers and left in a ditch and afterwards taken away by them the offence will not be larceny (*R.* v. *Townley* (1871), L. R. 1 C. C. R. 315 ; 35 J. P. 709 ; and *R.* v. *Tillson* (1879), 43 J. P. 122). A gamekeeper cannot be convicted of embezzlement of game where the wrongful killing and removing are one continuous act (*R.* v. *Read* (1878), 3 Q. B. D. 131 ; 42 J. P. 470 ; 47 L. J. 50), and "nicking" or marking rabbits found concealed which had been wrongfully trapped by a keeper does not reduce them into the possession of the master (*R.* v. *Petch* (1878), 42 J. P. 694 ; 38 L. T. 788).

Claim of right.—A *bonâ fide* claim of right will oust jurisdiction of justices. The claim must be made upon reasonable grounds, and justices have jurisdiction to decide on the reasonableness, and the evidence to support it (*Legg* v. *Pardoe* (1861), 25 J. P. 39 ; *Watkins* v. *Major* (1875), 39 J. P. 808).

In tenancies since the Ground Game Act, 1880, the tenant (*k*) has the right of sporting if not expressly reserved to the landlord.

GAME TRESPASS (GAME ACT, 1831).

1 & 2 Will. 4, c. 32, s. 30, enacts that a person committing a trespass by entering or being (*l*) in the day time (*m*) on any land in pursuit of game, or of woodcocks, snipes, quails, landrails, or conies is liable to penalty, £2 and costs.

If five or more persons together commit trespass, penalty on each person, £5 and costs.

Refusing to give name.—By s. 31, where any person shall be found on any land, or upon his Majesty's forests, parks, chases, or warrens in search of game or woodcocks, snipes, quails, landrails, or conies, it shall be lawful for any person having the right of killing the game upon such land, or for the occupier of the land, or

(*k*) As to right under Ground Game Act, 1880, see heading "GROUND GAME," *post*.

(*l*) It has been decided that the words "entering or being," mean a *personal* and not *constructive* entry, such as firing a shot into or sending a dog into a close (*R.* v. *Pratt* (1855), 19 J. P. 259, and *Mayhew* v. *Wardley* (1863), 8 L. T. 504).

(*m*) *Day time*—from hour before sunrise to hour after sunset (s. 34).

for any gamekeeper or servant of either of them, or for any person authorised by either of them, to require the person so found forthwith to quit the land wherein he shall be so found, and also to tell his Christian name, surname, and place of abode: and if such person shall, after being so required, offend by refusing to tell his real name or place of abode, or by giving such a general description of his place of abode as shall be illusory for the purpose of discovery, or by wilfully continuing or returning upon the land, it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order or in his aid, to apprehend such offender, and to convey him or cause him to be conveyed before a justice of the peace—penalty, £5: Provided always, that such person so apprehended shall be brought before some justice of the peace within the space of twelve hours, otherwise such person must be discharged, but may be proceeded against for his offence by summons or warrant, as if no such apprehension had taken place.

The person to be apprehended must be found not only upon the land, but *in search and pursuit* of game. The moment he is off the land all power to seize him ceases without a warrant. Also the trespasser must have been required to quit and tell his name, and wilfully continue or return (*R.* v. *Long* (1836), C. & P. 314).

The offence must be in search of *live* game (*Taunton* v. *Jervis* (1879), 43 J. P. 784).

Using violence.—By s. 32, persons to the number of five or more found on any land or in his Majesty's forests, parks, etc., in the day time in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, any of such persons being armed with a gun, and any of such persons by violence, intimidation, or menace, preventing or endeavouring to prevent any person described in s. 31 approaching them for the purpose of requiring them to quit the land, or to tell their names—and every person abetting—are liable to a penalty of £5.

Seizure of game.—By s. 36, where any person shall be found by day or night on any land, etc., in search or pursuit of game, and shall have in his possession any game which shall appear to have been recently killed, any person having the right of killing game on such land, or the occupier, or any gamekeeper or servant of either of them, or any person acting in aid of such persons, may demand the game so found in his possession, and in case the same shall not be immediately delivered up, may seize and take the same from him for the use of the persons entitled to the game.

The demand must be made on the party while he is on the land, and if he resist, force may be opposed to force.

The Act is not to apply to persons coursing or hunting in fresh pursuit, with hounds or greyhounds, of deer, hare (*n*), or fox started upon other land (s. 36) (*o*).

Prosecutions under the Act must be commenced within three calendar months.

NIGHT POACHING ACT, 1828 (9 GEO. 4, C. 69).

Any person unlawfully taking or destroying any game (*p*) or rabbits by night in any land open or inclosed (*q*), or by night unlawfully entering or being on any land (*r*), whether open or inclosed, with any gun, net, engine or other instrument for the purpose of taking or destroying game (*s*), is liable for a first and second offence to imprisonment (three and six months), and for a third offence is guilty of a misdemeanor (s. 1).

Using violence.—Offenders assaulting or offering violence with gun, cross-bow, fire-arms, bludgeon, stick, club, or any other offensive weapon (*t*) whatever, to owners or occupiers of land, their gamekeepers, servants, or assistants, are guilty of a misdemeanor (s. 2).

The police are not to be employed as gamekeepers or watchers of game, but they may assist in the apprehension of offenders "using violence."

By s. 9, persons to the number of three or more together unlawfully by night entering or being on any land, open or inclosed, to take or destroy game or rabbits, any of such persons being armed with gun, cross-bow, fire-arms, bludgeon, or other offensive weapon, are guilty of a misdemeanor. The offence is not triable at sessions.

"**Night**" commences one hour after sunset, and concludes one hour before sunrise (s. 12).

(*n*) The actual occupier or the owner of inclosed lands having a right to kill game thereon, may kill hares without a game certificate (Hares Act, 1848). See also heading "GROUND GAME," *post*.

(*o*) Trespass in *fox hunting* cannot be justified. See *Paul* v. *Summerhayes* (1878), 4 Q. B. D. 9; 43 J. P. 818; 48 L. J. 33.

(*p*) "Game" includes hares, pheasants, partridges, grouse, heath or moor game, black game and bustards (s. 13 of Act).

Rabbits are coupled with game in ss. 1, 9 of Act.

(*q*) Extended by 7 & 8 Vict. c. 29, to any public road, highway, or path, or the sides thereof, or at the opening outlets, or gates from any such land into any such road, highway, or path.

(*r*) Where the right to shoot and to the game is reserved to the landlord, the tenant cannot give permission to a person to *sport* on the land (*Pryce* v. *Davies* (1871), 35 J. P. 374), but see now Ground Game Act, 1880.

(*s*) The second part of this section does not extend to rabbits.

(*t*) Large stones, if taken by the defendants for the purpose of inflicting bodily injury, come within the meaning of offensive weapons.

To support a charge of night poaching by three or more armed (s. 9), all the prisoners need not actually enter the land; if all are associated together for one common purpose, and some enter whilst others remain near enough to assist, it is sufficient (*u*). The land entered may consist of two closes held by different occupiers, and one may be inclosed and the other open.

Apprehension.—Owners or occupiers of land, their gamekeepers, servants, or assistants, may apprehend any offender "found offending" (*x*), or in case of pursuit may follow him to any place to which he has escaped, and hand him over to a peace officer (s. 2 of Act).

Prosecutions under this Act for offences punishable summarily must be commenced within six months.

Ground Game.

By the Hares Preservation Act, 1892, although no "close (*a*) time" is provided, the sale or exposing for sale of hares or leverets is illegal during the months of March, April, May, June, and July, but this does not apply to foreign hares imported.

By the Ground Game Act, 1880, every occupier of land is to have as incident to, and inseparable from, his occupation of the land, the right to take and kill ground game, *i.e.*, hares and rabbits thereon, concurrently with any other person who may be entitled to kill and take ground game on the same land, subject to the limitations in clause 1. The occupier cannot divest himself of the right, but he may authorise in writing one person to kill ground game with fire-arms in addition to himself (*b*). The authority, can, however, only be given to—(1) members of his household resident on land (*c*); (2) persons in his service on such land; (3) one other person bonâ fide employed for reward for the purpose (43 & 44 Vict. c. 47).

Ground game must not be shot between the first hour after sunset and the last hour before sunrise. Traps, if used, must be set in rabbit holes, and use of poison is prohibited—penalty, £2.

Note.—The occupier and persons authorised need not have game licences, but require gun licences.

(*u*) *R.* v. *Whittaker* (1848), 12 J. P. 612; 17 L. J. 127.

(*x*) The offender must be found upon the land or he cannot be apprehended.

(*a*) The close days for killing hares (not rabbits) are Sunday and Christmas Day.

(*b*) Occupier with power to kill rabbits can invite any number of people to shoot the animals without necessity of giving written permission, but if he has only "concurrent right" (under Act of 1880) he can authorise only *one* person.

(*c*) It is questionable whether this would apply to a temporary visitor.

As to power of constable to enter on land and demand licences, see title "GUN LICENCES," (s. 10), *post*.

GAMING.

See title "BETTING AND GAMING," *ante*.

GUN LICENCES.

(33 & 34 VICT. c. 57.)

Gun licences are issued by the Excise (duty 10s.). Licences expire on July 31st in each year. A register of licences is kept by the officers of Inland Revenue, and is open to the inspection of the constabulary. The term "gun" includes a firearm of any description (*d*), air-gun, etc.

Every person who shall use or carry a gun *elsewhere than in a dwelling-house, or the curtilage* (*e*) *thereof*, without having in force a licence duly granted to him under the Act, shall forfeit the sum of £10.

Exemptions. — The following persons carrying guns are exempted from penalty: (1) Soldiers, sailors, volunteers, or police, carrying gun, etc., on duty; (2) persons licensed to kill game; (3) persons carrying gun belonging to and for use of person so licensed, or licensed under this Act, but such person is required to give name and address, etc., of himself and employer; (4) occupiers of land scaring birds (*f*) or killing vermin (*g*) on such lands, or on any lands, by order of the occupier, who shall have a licence or certificate to kill game, or a licence under this Act; (5) gunsmiths or their servants, carrying or using gun in ordinary course of trade; (6) carriers carrying gun in ordinary course of business.

Duty of police. —When a constable meets a person carrying a gun, who he has reason to suspect has not a gun licence for the current year, it is the duty of the constable to demand the production of the gun licence, and

(*d*) A small toy pistol is a firearm (*Campbell* v. *Hadley* (1876), 40 J. P. 756).

(*e*) An orchard separated from the house by an inclosed yard and a small garden beyond that is not within the curtilage (*Asquith* v. *Griffin* (1884), 48 J. P. 724).

The word "curtilage" may be taken as including the outbuildings, offices, yards, and inclosed ground *adjoining* to the house.

(*f*) The term "scaring birds" does not extend to killing birds, but in August, 1884, the Board of Inland Revenue stated that where a person duly authorised by the holder of a game licence shoots rooks, sparrows, or rabbits for the protection of crops from their depredations no prosecution would follow.

(*g*) This does not include rabbits.

unless the person produces such licence or a game licence (*h*), the constable should require of him his name and address. If the person declares the same the constable should report the matter through his officers to the Inland Revenue. Should such person *refuse* to declare his name and address, the constable may *arrest* and convey him before a magistrate, who can deal with the case summarily.

Under s. 10 of Act, police have full power to enter upon land or premises (otherwise than a dwelling-house or the curtilage thereof) for the purpose of carrying out provisions of Act.

Under s. 6 of 45 & 46 Vict. c. 72 (Revenue Act, 1882), if a person is charged with sporting without a game licence (under 24 & 25 Vict. c. 90, s. 4), and the court do not think it clear that he was using a gun for the purpose of killing game, they may acquit him of the charge, and if it appears that he has not a gun licence they may convict him under the Gun Licence Act, 1870 for using or carrying a gun without a licence.

PISTOLS ACT.

As to pistols, see title "PISTOLS ACT, 1903," *post*.

HARES PRESERVATION ACT, 1892.

See title "GAME," p. 277, *ante*.

HAWKERS.

(51 & 52 VICT. c. 33.)

Hawkers.—The Hawkers Act, 1888, repeals 50 Geo. 3, c. 41, and consolidates the law regarding hawkers. Section 2 defines a "hawker" to be "any person who travels with a horse (*i*) or other beast bearing or drawing burden, and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares, or merchandise, or exposing samples or patterns of any goods, wares, or merchandise, to be afterwards delivered, and includes any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandise in or at any house, shop, room, booth, stall, or other place whatever hired or used by him for that purpose." (*k*)

(*h*) In no case should the constabulary demand the production of a game certificate where a gun licence is produced, as they have no duty to discharge as to whether persons have or have not a licence to kill game.

(*i*) See Pedlars Act, 1871, *post*, which applies to persons travelling without horse or other beast.

(*k*) See *Hudson* v. *Shooter* (1891), 55 J. P. 325. S., usually residing at N., hired a room and sold wearing apparel there, and five days later did

Exemption. — Certain persons are exempted: Commercial travellers, the real worker or maker of any goods and his children and servants, sellers of fish, fruit, victuals, and coal, sellers of goods in any mart, market, or fair legally established (s. 3).

Licences.—*Hawkers have to take out a licence (duty* £2), *expiring March* 31*st in each year.*

Hawking without a licence or not producing licence on demand is punishable by fine, £10.

A licence to hawk can only be granted on production of a certificate signed by a clergyman or minister and two householders of the parish or place wherein the applicant resides, or by a justice for the county or place or superintendent or inspector of police for the district wherein the officer to whom application is made for the grant of a licence resides, attesting that the applicant is of good character and is a proper person to be licensed as a hawker.

Provisions to be observed by hawker.—A hawker must keep his name and the words "licensed hawker" on every box or package and every vehicle used for the carriage of his goods, and on every room and shop in which his goods are sold, and on every handbill he distributes. He cannot hire or lend his licence to another. If an unlicensed person uses the words "licensed hawker," or other words to that effect, or trades under a licence granted to any other person, he may be fined £10.

The hawking of gunpowder is dealt with under Explosives Act. See title "EXPLOSIVES ACT, 1875," *ante*. Regarding petroleum, see title "PETROLEUM," *post*.

An officer of Inland Revenue or a police officer may arrest a person hawking without a licence and convey him to a justice, who on his conviction may, in default of payment of penalty, commit offender for one month.

HIGHWAYS.

(5 & 6 WILL. 4, c. 50 (1835); 27 & 28 VICT. c. 101 (1864); 41 & 42 VICT. c. 77 (1878).)

The police are required to enforce certain provisions of the Highway Acts, especially those relating to nuisances and obstructions (ss. 5, 72—78, Act of 1835).

By s. 25 of the Local Government Act, 1894, *highway boards* are to cease to exist, and to be succeeded by *rural district councils*. All the

the same at a neighbouring town :—*Held*, justices were wrong in not convicting. See also 60 J. P. 620, *re* conviction of canvassers "hawking" sewing machines (Darlington Police Court, September, 1896); also *Holland* v. *Hall* (1902), 66 J. P. 424; 86 L. T. 355.

provisions of the Highway Act, 1835, as to the surveyor (*l*) must be deemed to be superseded or transferred to the district council, which has, as respects highways, all the powers and liabilities of an urban sanitary authority under ss. 144—148 of the Public Health Act, 1875.

By the Local Government Act, 1888 (s. 3), the administrative business of quarter sessions as to bridges and roads repairable with bridges and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority, is transferred to the county council, and the entire maintenance of main roads vests in that body (*m*).

Persons committing offences against the Highways Acts should be summoned, when their names and addresses can be obtained. Persons refusing to give their names and addresses may be apprehended without warrant by any surveyor or person acting under his authority, or any other person witnessing the commission of the offence (5 & 6 Will. 4, c. 50, s. 79).

"Highways" are defined to be all carriage or cart roads, bridleways, footways, bridges, causeways, churchways, and pavements.

Encroachments.—Any person encroaching (*n*) by making or causing to be made any building, hedge, ditch, or other fence, or any carriage or cartway within the distance of fifteen feet from the centre of the road (s. 69). Penalty, 40*s*. [Section 63 of Act defines "centre" of road.] The statute is extended by Highway Act, 1864, s. 51. No encroachment to be allowed which would reduce width of road to less than thirty feet between the fences (*o*).

(*l*) If any highway is out of repair, or is not well and sufficiently repaired, and information on oath of one witness be given to a justice, such justice may summon the surveyor (now the rural district council) or other person or body politic or corporation chargeable with such repairs to appear before the justices at special or petty sessions (27 & 28 Vict. c. 101, s. 46).

Under the Act of 1835 any surveyor leaving heap of stones in road at night to danger of any person is liable to penalty of £5.

(*m*) On complaint that the highway authorities have made default in maintaining or repairing highways, justices of a county in general or quarter sessions may make an order limiting a time for performance of the duty, and if such order is not complied with may appoint a person to perform the duty and order the expenses to be paid by the authority in default (41 & 42 Vict. c. 77, s. 10).

(*n*) Section 51 of 27 & 28 Vict. c. 101, contains further provisions regarding encroachments, removing turf from roadside, etc.

(*o*) It is not uncommonly believed that there is a right to inclose up to fifteen feet from the centre of the road. This is not so. The public have the right to the roadside waste beyond this limit. The owner of the land over which a public footpath lies has the right to maintain existing stiles or gates, but the use by the public must not be hindered by the erection of less convenient gates or stiles than have heretofore existed.

This supersedes decision in *Chapman* v. *Robinson* (1858) 28 L. J. 30.

Steam engines, windmills, limekilns, etc.—No pit or shaft to be sunk, or steam engine or other like machine (*p*) to be erected within twenty-five yards, nor any windmill within fifty yards, nor any fire to be made for calcining or burning ironstone, limestone, bricks or clay, or coke, within fifteen yards from any part of any carriage or cartway, unless the same be within some house or building, or behind some wall or fence sufficient to conceal or screen the same from such way. Penalty, £5 for every day same shall continue (s. 70).

Quarries.—Any quarry dangerous to public and within fifty yards of highway must be kept fenced (50 & 51 Vict. c. 19).

Trees, hedges, ditches.—A justice of the peace can compel owner (which includes occupier) to cut trees, etc., which obstruct or prejudice any carriageway (on complying with certain directions), and can order surveyor to scour ditches (ss. 64—67).

The following is an epitome of the sections (72—78) relating to nuisances and obstructions :

Various offences.—Section 72.—To wilfully (*q*) ride, lead, or drive any horse, ass, sheep, mule, swine, cattle, or carriage (*r*) of any description, or any truck or sledge, upon any footpath or causeway by the side of any road (*s*) made or set apart for the use or accommodation of foot passengers. To tether any ass, sheep, mule, swine, or cattle on the highway so as to suffer the tethered animal to be thereon.

To cause any injury or damage to be done to any highway, or the hedges, posts, rails, walls, or fences thereof, or wilfully obstruct the passage of any footway (*t*), or wilfully destroy or injure the surface of any highway, or wilfully or wantonly grub up, cut down, remove or damage the posts, blocks, or stones fixed by the surveyor as there directed, or dig or cut down the banks which are the securities and defence of the highways ; or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same ; or pull down or destroy, or obliterate or deface any milestone or post, or direction post or stone erected upon any

(*p*) Locomotive ploughing machines are exempt under 28 & 29 Vict. c. 83, and locomotive threshing machines under 57 & 58 Vict. c. 37, s. 2. provided in each case a person is stationed as directed.

(*q*) "Wilfully" means "purposely."

(*r*) Bicycles and tricycles are carriages. See title "BICYCLES," *ante*.

(*s*) See *R.* v. *Pratt* (1867), 32 J. P. 246, as to "footpath by side of highway."

(*t*) Ploughing a footpath usually ploughed over is not an offence (*Mercer* v. *Woodgate* (1869), L. R. 5 Q. B. 26 ; 33 J. P. 759).

highway, or play at football or other game (*u*), on any part of the highway to the annoyance of any passenger or passengers.

Or if any hawker, higgler, gipsy, or other person travelling shall pitch any tent, booth (*v*), stall or stand, or encamp upon any part of the highway; or if any person shall make or assist in making any fire, or wantonly fire off any gun or pistol, or set fire to or wantonly let off or throw any squib, rocket, serpent (*y*), or other firework whatsoever, within fifty feet of the centre of any carriage or cartway; or bait or run for the purpose of baiting any bull upon or near the highway; or lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon the highway to the INJURY OF SUCH HIGHWAY, OR TO THE INJURY, INTERRUPTION, OR PERSONAL DANGER OF ANY PERSON TRAVELLING THEREON (*z*), or suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, erection, land, or premises adjacent thereto; or if any person shall in any way obstruct the free passage of any such highway—

The offender shall, for every offence, be liable to a penalty of 40*s*., in addition to liability to make good the damage occasioned.

Timber and rubbish.—Section 73.—If timber, soil, rubbish, etc., or other matter or thing be laid on a highway (*a*) so as to be a nuisance, and shall not, after notice by the surveyor, be forthwith removed, it shall be lawful for the surveyor, by order in writing from one justice, to clear the highway by removing the timber, etc., and to dispose thereof, and to apply the proceeds towards the repair of the highways within the parish, but if not of sufficient value to defray the expenses of removal, the person who laid or deposited the soil, etc., shall repay the surveyor such expense, which shall be levied as other forfeitures.

Cattle straying.—Section 25 of Highway Act, 1864. [This section is substituted for s. 74 of Act of 1835.]

If any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine, is at any time found

(*u*) A mock hunt, with fancy dresses and trumpets, after a man dressed like a stag, is a game (*Puppin* v. *Maynard* (1863), 27 J. P. 745). A bicycle race on a highway would also probably be considered a game. See 33 J. P. 562.

(*x*) Except where uninterrupted custom for twenty years.

(*y*) See title "EXPLOSIVES ACT, 1875," *ante*.

(*z*) NOTE.—The words in capitals qualify and override words of section from "if any hawker, etc."

(*a*) The justices must determine whether the road is a highway or not if the jurisdiction is disputed (52 J. P. 788, 818).

straying or lying about any highway (*b*), or across any part, or by the side thereof (except in any parts of any highway as pass over any common or waste, or uninclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding 5*s*., to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the field or stable of the owner or owners, or to the common pound, if any, of the parish where the same shall be found, or to such other place as may have been provided for the purpose. Provided always that no owner of such animal shall in any case pay more than the sum of thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorised keeper of the pound. Provided also that nothing in this Act shall be deemed to extend to take away any right of pasturage (*c*) which may exist on the sides of any highway.

Pound breach.—Section 75 of Highway Act, 1835, relates to pound breach, viz., releasing of cattle properly impounded before discharged by due course of law. Penalty, £20.

Carts and drivers.—Sections 76, 77.—The owner's true name, with trade or abode, must be legibly painted in letters one inch long on the off side of the waggon, cart or other such carriage, or the off side shafts thereof, as detailed in s. 76 of Act of 1835, under a penalty of 40*s*. When one person acts as driver of two carts, the horse of the hinder cart shall be attached by a rein (not exceeding four feet in length) to foremost cart. Penalty 20*s*., if not so attached.

Offences by drivers.—Section 78.—If the driver of any waggon, cart, or other carriage of any kind shall ride upon such carriage, or upon any horse or horses drawing the same on any highway, not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with reins, and are conducted by some person holding the reins of all the horses drawing the same, excepted), or if the driver of any carriage whatsoever, on any part of a highway, shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person, horse, cattle, or goods conveyed in any carriage passing or being

(*b*) The offence is complete if cattle be "straying or lying" whether with or without keeper, even though owner has right to herbage (*Golding* v. *Stocking* (1869), 33 J. P. 278).

(*c*) See 32 J. P. 498, and *Coverdale* v. *Charlton* (1878), 43 J. P. 268.

upon such highway, or shall quit the same and go on the other side of the hedge or fence inclosing the same, or shall negligently or wilfully be at such distance from such carriage, or in such a situation (*d*) whilst it shall be passing upon such highway that he cannot have the direction and government of the horses or cattle drawing the same, or shall leave any cart or carriage on such highway so as to obstruct the passage thereof, or if any person shall drive or act as the driver of any waggon, cart, or other such carriage, not having the true owner's name as thereby required, and shall refuse to tell or discover the true Christian name and surname of the owner or principal owner of such carriage, or if the driver of any waggon, cart or other carriage whatsoever, or of any horses, mules, or other beasts of draught or burthen, meeting any other waggon, cart or other carriage whatsoever, or horses, mules, or other beasts of burthen, shall not keep his waggon, cart or carriage, or horses, mules, or other beasts of burthen, on the left or near side (*e*) of the road, or if any person shall in any manner wilfully prevent any other person from passing him, or any waggon, cart, or other carriage or horses, mules, or other beasts of burthen under his care, upon such highway, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, on any highway, or shall not keep his waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, on the left or near side of the road, for the purpose of allowing such passage, or if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously (*f*), so as to endanger the life or limb of any passenger. Penalty, £5, if driver be not owner, or £10 if he be owner, and in default imprisonment, six weeks.

Byelaws.—Under the Highways and Locomotives (Amendment) Act, 1878, the justices of a county (*g*) in general or quarter

(*d*) It is no defence that the carriage was standing still upon the highway and that no obstruction was caused if the driver was absent (*Phythian* v. *Baxendale* (1895), 59 J. P. 217).

(*e*) The Queen's Bench Division held, June 22nd, 1889, that there is no such rule of the road as to make the left always the proper side when there is danger in keeping to the left (*Finegan* v. *London and North Western Rail. Co.* (1889), 53 J. P. 663).

(*f*) This will include furious riding, although penal part of enactment omits mention of rider (*Williams* v. *Evans* (1876), 41 J. P. 151). Where Towns Police Clauses Act, 1847, is in force, offence may be prosecuted under that statute.

(*g*) This business has been transferred to the county council (51 & 52 Vict. c. 41, s. 3 (8)).

sessions assembled may make byelaws (*h*) with respect to main roads or highways within any highway area in their county.—

Prohibiting or regulating the use of waggons, etc., drawn by animal power, having wheels of which the fellies or tires are not of such width as may be thereby specified ;

Prohibiting, etc., the use of any waggon, etc., not having the nails on its wheels countersunk, or having on its wheels bars or other projections forbidden by such byelaws ;

Prohibiting, etc., the locking of the wheels of any waggon, etc., when descending a hill, unless there is placed at the bottom of the wheel during the whole time of its being locked a skidpan, slipper, or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel ;

Prohibiting, etc., erection of gates across highways and prohibiting gates opening outwards on highways.

LOCOMOTIVES.

The use of locomotives on turnpike roads and other roads (except "light locomotives") is regulated by the Locomotives Act, 1861 (24 & 25 Vict. c. 70). The Act is amended by 28 & 29 Vict. c. 83, and further provisions are contained in 41 & 42 Vict. c. 77 ; 42 & 43 Vict. c. 67 ; and 46 & 47 Vict. c. 43.

The Acts with slight exceptions are not to apply to light locomotives.

Locomotives can only be used on highways (*i*) subject to certain rules for working, and certain restrictions as to speed, consumption of smoke, etc. Penalty for infringement of rules, £10. The name and residence of owner are to be affixed to locomotive. See title "LOCOMOTIVES ON HIGHWAYS," *post*.

HOMICIDE.

Homicide is the killing (*k*) of a human being by the act of another human being.

(*h*) Byelaws are made in the "public interest." Any person (a constable) can prosecute for breach of same (*Badcock* v. *Sankey* (1890), 54 J. P. 564). As to byelaws in quarter sessions boroughs, see Local Government Act, 1888, s. 33.

(*i*) Persons using traction engine and trucks on a highway may be indicted for a nuisance if they create a substantial obstruction (*R.* v. *Chittenden* (1885), 49 J. P. 503). As to "user" for "agricultural purposes," see 53 J. P. 598, and 55 J. P. 583.

(*k*) Death must take place within a year and a day from the time the injury was inflicted, otherwise the law presumes that the injury was not the cause of death, and it cannot be deemed homicide.

Homicide is of three kinds — justifiable, excusable, or felonious (*l*)—the latter coming under the definition of either "murder" or "manslaughter." These crimes are dealt with under 24 & 25 Vict. c. 100.

Justifiable homicide is occasioned in the execution or advancement of justice, or for the prevention of forcible or atrocious crime. In such cases there must be an apparent necessity (*m*).

Excusable homicide is occasioned by misadventure or accident, or in self-defence.

Infanticide.—Infanticide is the killing of an infant after it is born.

[It appears from a statement made by the Attorney-General in the House of Commons, when speaking on "Criminal Code" (May 14th, 1878), "that if during the course of the birth of any child, the mother or nurse, or any bystander deliberately inflicts any wound or other injury upon the child which is being born, and which prevents its being born alive into the world, although such injury is inflicted with the most evil intention and motive it is possible to conceive, not only has no murder been committed, but no offence whatever punishable under the law by even the mildest sentence."]

Murder is thus defined by Lord COKE (*n*):

"Where a person of sound memory and discretion unlawfully kills any reasonable creature *with malice aforethought*, express or implied."

Manslaughter is unlawful homicide, committed *without premeditation*. It may be voluntary upon a sudden affray, or involuntary, but in the commission of some unlawful act (*o*).

No provocation will justify or excuse it. The crime will in some cases amount to murder or manslaughter according to the fact whether since the provocation there has been sufficient time for passion to subside.

As to prosecution of quacks for occasioning death of patients, see *R.* v. *Crook* (1859), 1 F. & F. 521. The question for jury will be whether

(*l*) Clerk to justices is required to inform the solicitor to Treasury upon a capital charge being made.

(*m*) A person may successfully justify killing another in self-defence, but he must not take away the life of an innocent person to save his own. As to the doctrine of necessity, see p. 292.

(*n*) As to steps to be taken in cases of murder, see CONSTABLES, p. 70, *ante*.

(*o*) See 24 & 25 Vict. c. 100.

prisoner acted with criminal inattention, rashness or carelessness. A parent cannot be convicted of manslaughter for wilfully neglecting, on account of his religious views, to provide medical aid for his child, unless it can be proved that death was accelerated or caused thereby (*R.* v. *Morby* (1882), 51 L. J. 85; 46 J. P. 442). Nor a parent for omitting to call in a medical man to his son suffering from inward inflammation (*R.* v. *Hines* (Peculiar People), C. C. Court, August, 1874). Nor a mother for not sending for a midwife for her daughter (*R.* v. *Shepherd* (1862), 31 L. J. 102).

Where several persons participate in the commission of a dangerous act, they may all be convicted. So three rifle volunteers who had fired off cartridges at a board in private grounds, one of which killed a boy who had climbed up into a tree in a garden about 400 yards off, were all equally guilty, although it was not clearly shown which shot caused the death (*R.* v. *Salmon and Others* (1880), 50 L. J. 25; 45 J. P. 270).

The following acts are given by Mr. Justice STEPHEN as amounting to such provocation as may reduce homicide from murder to manslaughter:

An assault or battery inflicting bodily harm or great insult. Two persons engaged in a sudden fight or unpremeditated duel. Unlawful imprisonment or unlawful arrest. Witnessing act of adultery committed on wife, or unnatural offence on son.

THE DOCTRINE OF "NECESSITY."

Necessity.—The doctrine that homicide is excusable by reason of *necessity* was fully discussed in *R.* v. *Dudley* (1884), 49 J. P. 69; 54 L. J. 32 (*The Mignonette Case*). Three seamen and a cabin boy being shipwrecked, and having escaped in an open boat, were eighteen days exposed: for seven of these days they had been without food. The men killed the boy, who was in the last stage of exhaustion, and fed upon his body, and were eventually rescued. It was held they were guilty of murder, as the killing was not in self-defence, nor justifiable on any ground of necessity.

As to killing a burglar, see Stephen's Commentaries, 8th ed., vol. iv., p. 49, and Digest of Criminal Law, p. 124: "If any person attempts the robbery or murder of another, or attempts to break open a house in the night time, and shall be killed in such attempt either by the party assaulted or the owner of the house, or the servant attendant upon either, or by any other person present and interposing to prevent mischief, *the slayer shall be acquitted* and discharged."

CULPABLE NEGLIGENCE.

Any person upon whom the law imposes a duty, or who has by any act taken upon himself any duty tending to the preservation of life, if he neglects to perform that duty by want of attention and caution, and thereby causes the death of any person, is guilty of "culpable negligence."

HORSEFLESH.

(52 & 53 VICT. c. 11.)

The Horseflesh (Sale of) Regulation Act, 1889, contains the following provisions :

No person shall sell, offer, expose, or keep for sale, any horseflesh for human food, elsewhere than in a shop, stall, or place, over or upon which there shall be at all times painted, posted, or placed, in legible characters of not less than four inches in length, and in a conspicuous position, and so as to be visible throughout the whole time, whether by night or day, during which such horseflesh is being offered or exposed for sale, words indicating that horseflesh is sold there (s. 1).

Section 2 provides that no person shall supply horseflesh for human food to a purchaser who has asked to be supplied with some meat other than horseflesh.

Section 3 provides that any medical officer of health or other officer of a local authority may inspect and examine meat supposed to be horseflesh, exposed for sale, and intended for human food, in any place other than such shop, stall, or place as aforesaid, and seize and carry away same.

Under s. 4 search warrants may be issued.

Section 5 provides for the disposal of flesh seized, and further deals with the offender on whom the *onus* of proof is thrown.

Horseflesh includes flesh of asses and mules.

HOUSEBREAKING.

The same conditions apply to housebreaking as to burglary, see "BURGLARY," p. 198, *ante*, but the breaking and entering must be by day (6 a.m. to 9 p.m.) instead of night (24 & 25 Vict. c. 96, ss. 56, 57).

HUSBAND AND WIFE.

See title "WIFE," *post*.

INDECENT ADVERTISEMENTS ACT, 1889.

(52 & 53 VICT. c. 18.)

It is an offence under this Act to affix to or inscribe on any house, wall, fence, etc., so as to be visible from any street, highway, or footpath, or to affix or inscribe in any urinal, or to deliver, etc., to

any inhabitant or person passing along the street, etc., or throw down areas of houses, or exhibit in window of house or shop any picture or printed matter which is of an indecent or obscene nature.

Punishment, fine of 40s., or, in discretion of court, imprisonment for one month (s. 3).

To send others to do the above-mentioned acts is an offence punishable by penalty of £5, or imprisonment three months (s. 4).

Section 5 defines advertisements declared indecent.

Arrest.—Police are authorised to arrest on view any persons found committing offences against Act (s. 6).

INDUSTRIAL SCHOOLS.

(29 & 30 VICT. c. 118 (1866)).

A school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught, shall be deemed an "Industrial School" within the meaning of the Industrial Schools Act, 1866. Such school when certified by Secretary of State shall be deemed a "certified industrial school," and shall be under the supervision of inspectors appointed by Secretary of State.

Any person may bring children coming within any of the following descriptions before two justices, who may order them to be sent to a certified industrial school :

Any child, apparently under the age of fourteen years, found begging or receiving alms (whether actually or under pretext of selling or offering for sale anything), or being in any street or public place for the purpose of so begging or receiving alms, or found wandering and not having any home, or settled place of abode, or proper guardianship, or visible means of subsistence, or found destitute, either being an orphan, or having a surviving parent who is undergoing penal servitude or imprisonment ; or that frequents the company of reputed thieves, or (by 43 & 44 Vict. c. 15), is lodging, living, or residing with prostitutes, or in house frequented by prostitutes.

A child under twelve years of age charged with any offence and not having been convicted of felony may be so dealt with.

Where parent or guardian of child under the age of fourteen represents that he is unable to control him, he may be sent to an industrial school.

Any child apparently under fourteen maintained in workhouse, etc., who is refractory, or child of parents undergoing penal servitude or imprisonment.

Any child escaping from a school or neglecting to attend school shall be guilty of an offence, and may be apprehended, and any child above ten so escaping may be apprehended and punished by imprisonment for not less than fourteen days or more than three months, and subsequently sent to reformatory. A child can be punished for neglecting or refusing to conform to rules of school.

Knowingly assisting or inducing a child to escape, or harbouring such child (or child placed on licence (*p*)), is punishable by fine, £20, or imprisonment, two months.

Under the Elementary Education Act, 1876 (s. 12), a child, above the age of five years, habitually neglected by parents or habitually wandering or consorting with criminals or disorderly persons, can be sent to an industrial school.

Justices are required to specify the school (which should be selected according to religious persuasion of child) and time of detention, but the child cannot be detained beyond the age of sixteen.

Justices may order parents to contribute five shillings a week towards the maintenance of a child.

Justices can order temporary detention of child in workhouse pending inquiries.

INEBRIATES ACTS.

The Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), provided for the establishment of "retreats," where habitual drunkards might retire with a view to self-cure, forfeiting to a certain extent their liberty.

The Act is continued and amended by the Inebriates Act, 1888 (51 & 52 Vict. c. 19).

A further Act (61 & 62 Vict. c. 60), passed in 1898, deals with the detention of criminal habitual drunkards, and the establishment of state and other reformatories.

The Inebriates Act, 1899, amends the Act of 1898 (s. 2) as to expenses of prosecutions, and gives power to deal summarily with "breach of regulations."

Short title.—The Inebriates Acts, 1879 to 1898, and the Act of 1899, may be cited together as the Inebriates Acts, 1879 to 1899.

(*p*) See Industrial Schools Amendment Act (57 & 58 Vict. c. 33), which allows supervision over discharged child till eighteen years of age.

ACTS OF 1879 AND 1888.

(42 & 43 VICT. C. 19; 51 & 52 VICT. C. 19.)

The Act of 1879 authorised justices to licence "retreats" to which habitual drunkards could be admitted on their own application (*q*). A person once admitted is not entitled to leave (unless discharged by licence) until the expiration of the time mentioned in the application, but such term is not to exceed twelve months.

"Habitual drunkard" means "a person who not being amenable to any jurisdiction in lunacy is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquors, at times dangerous to himself or herself or to others, or incapable of managing himself or herself, or his or her affairs."

A "retreat" means "a house licensed for the reception, control, care, and curative treatment of habitual drunkards." Retreats are to be inspected twice a year by inspectors appointed by the Secretary of State.

The Secretary of State can make rules regarding retreats.

HUSBAND, WIFE, CHILDREN, ETC.

As to habitual drunkard convicted of any offence against children, see 57 & 58 Vict. c. 41, s. 11, title, "CHILDREN," *ante*.

Protection is afforded to wife of "habitual drunkard" under s. 5 of Licensing Act, 1902. See title, "WIFE." *post*, and the same section of Act (1902) enables the husband to obtain an "order" from court of summary jurisdiction where the wife is a "habitual drunkard."

INEBRIATES ACT, 1898.

CRIMINAL HABITUAL DRUNKARD.

S. 1.—Where a habitual drunkard is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the court considers that drunkenness was a contributing cause of the offence, it may order his detention in any inebriate reformatory the managers of which are willing to receive him.

The section sets forth procedure as to arrangement, charge (*r*), etc., and contains a proviso requiring that due notice (seven days at least) as to intended charge, etc., be given to offender.

S. 2.—Any person who commits any of the offences mentioned in First Schedule to Act, and who within preceding twelve months has been convicted three times of any offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or if he consents to be dealt with summarily on summary conviction, to detention (not exceeding three years) in a certified inebriate reformatory.

(*q*) Application can be attested by any two justices.
(*r*) The Inebriates Act, 1899, provides as to expenses of prosecution.

The Summary Jurisdiction Act, 1879, shall apply to proceedings under this section.

The Licensing Act, 1902, s. 6, prohibits the sale of liquor to habitual drunkards coming within the provisions of this section. See title "DRUNKENNESS," p. 232 ("Black-listing"), *ante*.

INEBRIATE REFORMATORIES.

Ss. 3 to 12 of Act relate to establishment and control of State and other inebriate reformatories.

The Secretary of State is empowered to establish "State inebriate reformatories" or (on application made) "certified inebriate reformatories."

Power is given to make regulations (*s*) for the management and control of reformatories so established. Inspectors can be appointed, and contribution can be made by Treasury towards expenses (ss. 3 to 9).

Under s. 10, the expense of conveying a person to a reformatory shall be defrayed by the police authority, and shall be deemed part of the current expenses of that authority.

S. 11.—As to powers of reformatory officers, arrest, etc., a person escaping from a certified inebriate reformatory may be apprehended without warrant and brought back to the reformatory.

S. 12.—As to power to recover expenses against inebriate's estate.

AMENDMENT OF HABITUAL DRUNKARDS ACT, 1879.

Ss. 13 to 15 deal with transfer of licensing powers to county councils, power to contribute to retreats, and period of licence of retreat.

S. 16 amends s. 10 of the Act of 1879 (42 & 43 Vict. c. 19), and substitutes "a term not exceeding two years" as period of detention in reformatory for the term (twelve months) therein mentioned. Also "one justice shall be substituted for two justices as the attesting authority to the signature of an applicant."

S. 17.—As to extension of term of detention and re-admission.

S. 18.—As to escape of patient—a warrant to apprehend (under s. 26 of Act of 1879) may be issued by justice.

S. 19.—As to death of patient.

S. 20.—Power to Secretary of State to make regulation.

Ss. 21 to 30.—Supplemental provisions, definitions, short title, etc.

SCHEDULES.

The following is an epitome of the First Schedule to Act (referred to in s. 2), so far as it applies to England and Wales:

(*s*) Where a breach of the regulations is made punishable by fine or imprisonment, the breach shall be an offence which may be prosecuted summarily (Inebriates Act, 1899, s. 3).

INEBRIATES ACT, 1898—FIRST SCHEDULE.

Description of Offence.	Statute enacting Offence.
Being found drunk in a highway or other public place, whether a building or not, or on licensed premises Being guilty while drunk of riotous or disorderly behaviour in highway or other public place, whether a building or not Being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine Being drunk when in possession of loaded firearms	Licensing Act, 1872, s. 12.
Refusing or failing when drunk to quit licensed premises.	Licensing Act, 1872, s. 18.
To quit premises licensed under the Refreshment Houses Act, 1860.	Refreshment Houses Act, 1860, s. 41.
Being found drunk in street or thoroughfare within metropolitan police district, and being guilty of riotous or indecent behaviour.	Metropolitan Police Act, 1839, s. 58.
Being drunk in any street, and guilty of riotous or indecent behaviour therein.	Town Police Clauses Act, 1847, s. 29.
Being intoxicated while driving a hackney carriage.	Town Police Clauses Act, 1847, s. 61.
Being drunk during employment as a driver of a hackney carriage, or as a driver or conductor of a stage carriage in the metropolitan police district.	London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), s. 28.
Being drunk and persisting in attempting to enter a passenger steamer Being drunk on board, and refusing to leave such steamer	Merchant Shipping Act, 1894, s. 287.

The remaining provisions of Schedule apply to Scotland and Ireland.

The offence of being found drunk while in charge of a child is by Licensing Act, 1902, s. 2, to be included in this Schedule.

SECOND SCHEDULE.

The Second Schedule repeals part of s. 21 and certain provisions in First and Second Schedule of the Habitual Drunkards Act, 1879.

INEBRIATES ACT, 1899.

The Inebriates Act, 1899, amends the Act of 1898, and provides for expenses of prosecution.

INFANTS.

See "CHILDREN," *ante*.

INJURED ANIMALS ACT, 1894.

See "CRUELTY TO ANIMALS," *ante*.

INQUESTS.

A coroner's inquest for the purpose of inquiring into and ascertaining the cause of death should be held in cases of death by violence or casualty, sudden death, death by suicide, and cases where persons are found dead, or where persons die in prison. An inquest is held upon view of the body (*superrisum corporis*), and it is necessary that the jury should view the body or human remains, the body itself being part of the evidence before the jury. It would appear that a coroner has power to exclude the public or individuals from the inquest if he thinks fit.

Coroners can admit to bail persons charged with manslaughter (50 & 51 Vict. c. 71, s. 5).

As to presence of prisoners at inquests, see title, "CORONERS," *ante*.

Duty of police.—It is the duty of the constabulary, on hearing of any case of sudden or violent death, to inquire into the circumstances immediately, and report the same to the coroner (*t*). It is for the coroner to decide whether he considers it necessary to hold an inquest (*u*). Should he decide to do so, he issues his warrant or precept to the constable or other officer, who must, without loss of time, notify (*w*) twenty-four, or not less than twelve, housekeepers of the parish, precinct, or liberty. Persons may, if necessary, be summoned from different parishes. On no consideration are the jury to be of *kin to the deceased*, nor interested for any party charged or suspected in the cause of the death of the deceased.

Where dead bodies are found in the street, highway, etc., they should be examined and searched, and an inventory taken in the presence of some person of any property or papers found on them, which should be produced at the inquest. The constable should also produce any weapon or instrument found supposed to have been the means of death.

Under ordinary circumstances a body should not be moved from the place where it is found without the coroner's order, but this

(*t*) In absence or death of coroner two magistrates can hold inquest.

(*u*) But a coroner has not an absolute right to hold an inquest in any case he chooses. To justify him he must have *reasonable ground* for believing that the death was caused by unnatural means (*R.* v. *Stephenson* (1884), 53 L. J. 176; 49 J. P. 486). A coroner may be compelled to hold or re-open an inquest by *mandamus*.

(*w*) Constables are usually provided with a notice or summons book for the purpose, on the counterfoil of which they should enter particulars of time, service, etc., of notice.

does not apply to bodies found in places open to public view. The police should obtain from the coroner an order for the burial of the body, which can be delivered to the friends of the deceased or to the parish authorities. Application should be made to the coroner for any expense the police have been put to, in sending for the coroner, and summoning the jury.

INTIMIDATION.

Everyone commits an offence, and is liable to fine (£20) or imprisonment (three months), who, with a view to compel any person to abstain from doing any act which he has a legal right to do, uses violence towards or intimidates him, or persistently follows such person, or follows him with others in a disorderly manner, or injures his property, or hides his tools, clothing, etc., or hinders him in use of his tools or property (Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7). See also title, "TRADES UNIONS," *post.*

JURIES.

By the Juries Act, 1870 (33 & 34 Vict. c. 77), the laws relating to the qualifications, summoning, and attendance of special and common juries have been amended. As to the qualifications of special jurors, see s. 6. Various classes of persons are exempted from serving on juries, including peers, members of Parliament, judges, clergymen, Roman Catholic priests, ministers of any denomination whose place of meeting is duly registered, barristers-at-law actually practising, attorneys and solicitors actually practising, managing clerks and notaries public in actual practice, and many others. See Schedule to the Act.

The sheriff summons the jurymen, and they are liable to a fine for non-attendance.

As to jurors in boroughs, see 45 & 46 Vict. c. 50, s. 186.

In criminal trials a jury consists of twelve men, who must agree in their verdict.

A grand jury may consist of any number more than eleven, and decide by a majority.

Juries in county courts consist of five men.

The Juries Detention Act, 1897 (60 & 61 Vict. c. 18), permits separation of juries in cases of felony.

JURORS.

The qualification for common and special jurors is given in the Juries Act, 1825, s. 1, and the Juries Act, 1870, s. 6.

Certain persons are exempted from service. See Schedule to Juries Act, 1870.

Qualification of common juror in counties.—Every man between the age of twenty-one and sixty residing in a county in England who has £10 a year in land or tenements, if freeholds or copyholds, or the rents arising out of same, or who has £20 a year in lands or tenements held by lease for twenty-one years, or who is a householder assessed to the poor at £20—in Middlesex £30 (Juries Act, 1825).

JUSTICES.

See Sections I.—VII., pp. 1—60, *ante*.

LARCENY.

Larceny at common law is defined as "the wrongful taking and carrying away of the personal goods of another from his possession with a felonious intent to convert them to one's own use."

Goods which are not personal chattels at common law have been made the subject of larceny by statute. These statutory provisions were consolidated by the Larceny Act, 1861 (24 & 25 Vict. c. 96). See APPENDIX, *post*.

Larceny is either simple or accompanied by circumstances of aggravation (*x*).

Robbery (*y*) consists in the felonious taking of property from the person of another, or in his presence by violence, or putting him in fear.

Demanding with threats an exorbitant sum for services may be larceny.

The component parts of the offence of simple larceny are—

(1) The taking.

(2) The carrying away or asportation.

(3) The felonious intent.

(1) **The taking.**—The taking may be actual or constructive; actual where the taking is by force or stealth; constructive where possession is obtained by some trick or artifice, provided the right of property is not transferred from the owner, for if such right be transferred, the offence will not be larceny, but may be that of obtaining goods under false pretences. See title "FALSE PRETENCES," *ante*.

(2) **Asportation.**—With respect to the asportation or carrying away, removal, however slight, will be sufficient. Moving a parcel from one part to the other of a waggon; lifting plate out of a chest and placing it

(*x*) The distinction between grand and petty larceny is now abolished.

(*y*) See s. 40 of the Larceny Act, 1861.

on the floor; drawing a pocket book out of a pocket above the top of the pocket, although it should then fall again into the pocket (*z*).

(3) **The intent** (*a*).—As to the "felonious intent," it may be laid down as a general rule that the taking and carrying away is felonious when the goods are taken against the will of the owner, either in his absence or in a clandestine manner, or where possession is obtained by force or surprise, or by a trick or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intends to deprive the owner of his entire interest permanently and not temporarily. Moreover the goods must have been taken without any claim of right, for if they were taken by mistake or under a *bonâ fide* claim of right, however enforced, it will not be felony. The *animus furandi* must have existed at the time when the goods were taken, the subsequent appropriation of them without an original felonious intent not constituting the criminal offence of larceny.

Larceny "by trick."—Where the owner obtains the goods with intention of stealing (*animo furandi*) by a trick or fraudulent expedient, and the owner did not intend to part with the right of property, a conversion of them to the party's own use will be larceny; but where the party parts with the property and ownership, and not merely the possession, by means of some trick or fraud, the offence, if the case be within the criminal law, will be that of obtaining goods by false pretences. It is sometimes difficult to decide whether the offence be larceny or the misdemeanor of obtaining goods by false pretences (*b*).

Purse trick.—In the case of *R.* v. *Solomons* (1890), 62 L. T. 672, A. opened a purse and appeared to drop three shillings into it, and asked B., a bystander, to give him one shilling for the three shillings and the purse, which B. did, but found shortly afterwards it contained only three half-pence, the Court of C. C. R. held there was no larceny, B. having given away his property in the shilling, but that prisoner might have obtained it by false pretences.

(*z*) Any removal of the property from the person even a hair's breadth is sufficient (*R.* v. *Simpson* (1854), 24 L. J. 7); and on an indictment for robbery the jury may convict of an assault with intent to rob (Larceny Act, 1861, s. 41).

Attempt to pick empty pocket.—The case of *R.* v. *Collins* (1864), 33 L. J. 177, where it was held that if a person put his hand into the pocket of another with intent to steal what he can find, and the pocket is empty, he cannot be convicted of an attempt to steal, has been overruled by *R.* v. *Brown* (1889), 24 Q. B. D. 357; 59 L. J. 47; and see *R.* v. *Ring* (1892), 56 J. P. 552.

(*a*) When goods are once taken with a felonious intent, the offence cannot be purged by a restoration of them to the owners (*R.* v. *Lovell* (1881), 50 L. J. 91; 45 J. P. 406).

(*b*) As to the distinction between larceny and false pretences, see title "FALSE PRETENCES," *ante*.

Obtaining money by "ring dropping" and "ringing the changes" (*c*), is larceny, as is also the obtaining of money by means of a mock auction, on pretence that the party had bid for the goods (*R.* v. *Magrath* (1869), 21 L. T. 543).

In a case of what is commonly known as "welshing" (*d*), B. called out the odds on a race, received deposits, and gave betting tickets bearing his name, but disappeared amongst the crowd whilst the race was being run and altered his appearance by a loose coat. Upon being found he repudiated any knowledge of the bet, but dropped a lot of similar betting cards. The Court of C. C. R. upheld a conviction (*R.* v. *Sharp* (1887), 4 T. L. R. 152).

Larceny by finding.—It was laid down by PARKE, B., in *R.* v. *Vincent* (1848), 12 J. P. 570, that if lost property be found it is not larceny for the finder to appropriate it unless jury are satisfied that prisoner must have known who the owner was at the time he found it.

In *R.* v. *Dixon* (1855), 25 L. J. 39, it was decided that to convict a finder it must be proved that at the time of finding there was either the owner's name upon the article or something occurred which afforded the finder the means of knowing who the owner was at the time he picked up and examined the article, and that the finder was not bound to take active steps to find him. As to the rights of owners to stolen goods which have been sold in market overt, see title "RESTITUTION OF STOLEN PROPERTY," *post*.

Railway servants are guilty of larceny if they appropriate to their own use property found in railway carriages (32 J. P. 433).

Larceny by pawning.—Whether the offence of pawning the goods of another without his knowledge or consent will amount to unlawfully pawning (*e*) only or to larceny will depend on the intent and ability of the party to redeem the goods in question (*R.* v. *Medland* (1851), 5 Cox C. C. 292). See also Treat. 51 J. P. 495.

Misdelivery.—A person wrongfully appropriating to his own use goods, etc., delivered to him by mistake may be convicted of stealing them.

In *R.* v. *Ashwell* (where a sovereign was given in mistake for a shilling, and appropriated), the court of fourteen judges were evenly divided on the question of larceny (50 J. P. 184; 55 L. J. 65).

(*c*) In the case of *R.* v. *Hollis* (1883), 48 J. P. 120, A. was convicted of obtaining money by the trick commonly know as "ringing the changes," and the Court of C. C. R. upheld the conviction.

(*d*) See case of *R.* v. *Buckmaster*, p. 180, *ante*.

(*e*) Punishable under the Pawnbrokers Act, 1872.

Larceny by servants. — Where a servant disposes of his master's property, which is under his charge, he is guilty of larceny, the possession of the servant being in law the possession of the master. An unauthorised gift by a servant of his master's goods will be a felony (26 & 27 Vict. c. 103). As to servant taking his master's corn without permission for master's horses, see p. 356.

Larceny by bailee.—Persons to whom goods are entrusted for a specific purpose, viz., to be conveyed, repaired, etc., are considered "bailees" of such goods. If the bailee converts the same to his own use, etc., he is guilty of larceny. But a person cannot be convicted of larceny as a bailee, unless the bailment be to re-deliver the very same chattel, or money (Larceny Act, 1861, s. 3, and see *dicta* of CAVE, J., in *Re Bellencontre*, [1891] 2 Q. B. 122; 55 J. P. 694).

Husband and wife.—By the common law, a wife cannot be convicted of stealing goods belonging to her husband, or to her husband and others, but this has been modified by recent legislation. See heading "MARRIED WOMEN'S PROPERTY ACT, 1882."

If a married woman commits theft or other like offence in the company or by the coercion of her husband, she is not considered guilty. A married woman cannot be convicted as a receiver of stolen goods when the property has been taken by the husband and given to her by him (*R.* v. *Wardroper* (1860), 29 L. J. 116); but, if jointly indicted, the wife may be found guilty as well as the husband, if the jury find that she acted independently of her husband, and not under his control (*R.* v. *Cohen* (1868), 32 J. P. 565).

Husband receiving.—If a husband, knowing that his wife has stolen goods receives them from her, he may be convicted as a receiver (*R.* v. *Mathey* (1862), 32 L. J. 35). If stolen goods be returned to the thief in order to detect the receiver, the receiver cannot be convicted, since they were not stolen property at the time he received them (*R.* v. *Hancock* (1878), 38 L. T. 787; 42 J. P. 695).

Husband's goods.—*Prosecution of wife.*—By the common law a woman cannot be convicted of stealing goods belonging to her husband or to her husband and others; but this has been modified by the Married Women's Property Act, 1882. See *R.* v. *Featherstone* (1854), 23 L. J. 127; *R.* v. *Deer* (1862), 32 L. J. 33; *R.* v. *Streeter*, [1900] 2 Q. B. 601; 64 J. P. 537; 69 L. J. Q. B. 915; Treat. 499.

Night.—For purposes of Act, night shall be deemed to commence at 9 p.m. and (*f*) conclude at 6 a.m. on following morning. As to night offences, see s. 58 of Act of 1861.

Apprehension.—Any person "found committing" (*i.e.*, in the act of committing) any offence punishable under Act, except the offence of angling in the day time, may be immediately apprehended by *any person.*

A constable or peace officer may take into custody any person whom he may find lying or loitering on highway, yard, or other place during the night, and whom he may suspect of having committed or being about to commit any felony against the Act.

Punishment for simple larceny (except as otherwise provided for), penal servitude three years, or imprisonment two years.

Recent possession.—Possession of stolen property recently after its loss, if unexplained, is presumptive evidence that the party in possession stole it, but after the lapse of many months a person cannot be called to account for the manner in which the property came into his possession.

Indictment.—Several counts may be inserted in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, committed against the same person, within six months from the first to the last of such acts.

Venue.—Trial may take place either in jurisdiction in which the larceny was committed, or in which the offender shall have in his possession the stolen property (s. 114 of Act of 1861).

Receiving stolen goods.—This subject is treated of under ss. 91—95 of the Larceny Act, 1861. See also title "PREVENTION OF CRIMES ACTS" (ss. 16—19), *post.*

The offence may either amount to a felony or a misdemeanor. As to married women receiving property, see p. 304, *ante.*

Offences under Act.—The several offences dealt with under the Larceny Act, 1861, are set out in the epitome of statutes given in APPENDIX, *post.* The crimes of burglary and housebreaking are specially dealt with under those titles, pp. 198 and 203, *ante.*

The following matters claim special notice:

The stealing of animals "feræ naturæ" (*g*).—It is an offence under s. 21 of Act to steal any bird, beast, or other animal ordinarily kept in a state of confinement, or for any domestic purpose, not being the subject of larceny at common law, or wilfully kill same with intent to steal it.

(*f*) Being a matter of special importance in cases of burglary.
(*g*) Of a wild nature.

The birds and beasts or other animal within the operation of this section, when in the state described, are bears, foxes, monkeys, apes, polecats, cats, ferrets, thrushes, singing birds in general, parrots, and squirrels (1st Rep. Crim. Law Com., p. 14), and others (probably kept for whim, pleasure, or profit) as badgers, hawks, herons, falcons, goats, and rooks, for all these are *ferae naturae*, and although reclaimed do not serve for the food of man. As to swans, see "Game," 69 J. P. 31.

Rooks.—The offence of stealing rooks (*h*) from trees is not punishable either as larceny or by summary conviction, they being *ferae naturae*, and not protected by any particular statute, but proceedings under Malicious Damage Act, 1861, can be taken in cases where the trees are damaged.

Game, etc.—Young partridges reared by a hen, and which still remain with the hen, are the subjects of larceny (*R.* v. *Shickle* (1868), 32 J. P. 790). Dead game, before it is reduced into possession, is not the subject of larceny, and if a person picked up wounded game alive, but in a dying state, he is not guilty of larceny (*R.* v. *Roe* (1870), 22 L. T. 415). If rabbits be caught by poachers, and placed by them in a ditch, and afterwards taken away by them, the offence is not larceny, the animals being *ferae naturae* (*R.* v. *Townley* (1871), 40 L. J. 144; 25 J. P. 723). See also *R.* v. *Read* and *R.* v. *Petch*, under title "GAME," p. 278, *ante*.

Fishing. — *Angling in the daytime, etc.*—See s. 24 of Larceny Act, 1861, APPENDIX, *post*.

Dog stealing is an offence under s. 18 of Act, and a second offence is an indictable misdemeanor. See also s. 19 of Act as to possession of skin of stolen dog.

Pigeons.—Killing or taking pigeons (*i*) unlawfully is an offence (s. 23).

Gas.—Defrauding a gas company of gas by fraudulently introducing pipe is larceny (*R.* v. *White* (1853), 21 L. T. (o.s.) 159), as is the fraudulent abstraction of electricity (44 & 45 Vict. c. 56, s. 9).

The stealing of trees, shrubs, fruit, etc.—The stealing or destroying of trees or shrubs growing in parks, gardens, etc., or in any ground adjoining or belonging to any dwelling-house, if value of exceed £1, felony. If the trees, shrubs, etc., be growing elsewhere, if value exceed £5, it is felony (s. 32).

(*h*) As to taking wild birds during protected season, see "BIRDS," p. 190.

(*i*) A conviction cannot be sustained where a farmer under claim of right kills a pigeon.

The stealing or destroying of trees, shrubs, etc., wheresoever growing, to the value of 1*s.*, is an offence under s. 33, penalty, £5; for second offence, imprisonment twelve months; third offence, felony.

The stealing or destroying of any plant, root, fruit, or vegetable production growing in gardens (*j*), is an offence under s. 36; a second offence is felony.

Apples.—The right to take apples on branches over-hanging (*k*) the offender's garden is a moot point. See cases referred to in 32 J. P. 525.

The stealing, etc., of cultivated roots or plants growing elsewhere than in gardens is an offence under s. 37 of Act; penalty, £1. A second offence is punishable by imprisonment.

This section omits the word "fruit," so that it is doubtful whether it applies, unless the root or plant be stolen (32 J. P. 462). In *R.* v. *Bramby* ((1851), 3 C. & K. 315; 17 L. T. 261; Stone's Justices' Manual, 37th edit., p. 634), it was held that stealing clover growing in a field and cut by the defendant was punishable under the corresponding clause of a previous statute as stealing a cultivated root.

Mushrooms.—Mushrooms, watercress, flower-roots, and plants growing without cultivation are within this section. It is undecided whether if manure or salt be laid down to stimulate the growth of mushrooms they become cultivated plants. The question was raised in *R.* v. *Wallis* (1886), 50 J. P. 281; but the case was decided upon a different issue.

Fences.—As to stealing, or destroying with intent to steal, fences, see s. 35, Larceny Act, 1861, APPENDIX, *post*.

LARCENY ACT, 1901.

(1 EDW. 7, C. 10.)

FRAUDULENT MISAPPROPRIATION OF PROPERTY.

S. 1.—(1) Whosoever—

(a) being entrusted, either solely or jointly with any other person, with any property, in order that he may retain in safe custody, or apply, pay or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof; or

(*j*) As the stealing of fruit is not larceny at common law, if the stealing and carrying away form one act, it seems that stealing growing fruit from any other than the places specified in the section is not an offence at all (Stone's Justices' Manual, 37th edit., p. 634).

(*k*) The Court of Appeal decided in *Lemmon* v. *Webb* (1895), 64 L. J. Ch. 205; 59 J. P. 564, that a landowner is entitled to cut off the branches of his neighbour's trees which overhang his land without previous notice to owner.

(b) having, either solely or jointly with any other person, received any property for or on account of any other person,

fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property, or any part thereof or any proceeds thereof, shall be guilty of a misdemeanor. . . . . Penalty, penal servitude seven years, or two years' imprisonment.

S. 2.—(1) Sections seventy-five and seventy-six (*l*) of the Larceny Act, 1861, are hereby repealed.

(2) This Act shall have effect as part of the Larceny Act, 1861, and section one of this Act shall be deemed to be substituted for sections seventy-five and seventy-six of that Act. . . . .

LIBEL.

A libel consists of slanders expressed either in printing, writing, signs, such as hanging in effigy or pictures, tending to blacken the character of one who is dead (*m*), or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule. For such libels an indictment lies.

The following are indictable misdemeanors under the Libel Act, 1843 (6 & 7 Vict. c. 96):

(1) Publishing, or threatening to publish, any libel, or directly or indirectly threatening to print or publish, or proposing to abstain from, or offering to prevent the printing or publishing of any matter or thing touching any other person with intent to extort money, etc. Punishment, imprisonment three years.

(2) Maliciously publishing any defamatory libel knowing it to be false, imprisonment two years.

(3) Maliciously publishing any defamatory libel, fine or imprisonment, or both, but imprisonment not to exceed one year.

A libel may be "published" by delivering, reading, exhibiting, or otherwise communicating its purport to any other person than the one libelled.

Although a *bonâ fide* belief in the truth of the matter, and the existence of a legal moral or social duty to publish it, is a good defence at a subsequent stage of the proceedings, it forms no defence (except in the case of a libel published in a newspaper) in proceedings before justices (6 & 7 Vict. c. 96, s. 7).

(*l*) These sections applied only to factors and other agents, and to procure a conviction under s. 75 a direction in writing was essential.

(*m*) To make a libel on the dead a crime there must be a vilifying of the dead with a view to injure their posterity (*R.* v. *Ensor* (1887), 3 T. L. R. 366).

A fair criticism upon persons who submit themselves or their work to public criticism, or a report of proceedings in Parliament or in courts of justice, does not come within the definition of libel.

Libelling a parliamentary candidate.—Making or publishing false statement of fact in relation to personal character or conduct of a Parliamentary candidate for the purpose of affecting the return of a candidate at an election, is an offence under the Corrupt and Illegal Practices Prevention Act, 1895. Fine, £100. See 64 J. P. 666.

Words spoken, however scurrilous, even though spoken personally to an individual, are not the subject of indictment unless they directly tend to a breach of the peace. Blasphemous publications, or publications which are immodest or immoral, are offences indictable as misdemeanors.

NEWSPAPER LIBEL AND REGISTRATION ACT, 1881.

(44 & 45 VICT. C. 60.)

SUMMARY CONVICTION FOR LIBEL.

If a court of summary jurisdiction, on hearing of charge against a proprietor, publisher, editor, etc., of a newspaper for a libel published therein, is of opinion that, though the person is guilty, the libel is of a trivial nature, the court shall cause the charge to be reduced into writing and read to the person charged, who is to be asked whether he desires to be tried by a jury or to be dealt with summarily, and, if such person consents, the court may summarily convict him. Penalty, fine not exceeding £50 (s. 5).

The court may receive evidence as to the publication being for the public benefit, as to the libel being true, as to the report being fair and accurate and published without malice, etc.

If the court are of opinion that a jury would acquit the person charged, they may dismiss the case (s. 4).

LAW OF LIBEL AMENDMENT ACT, 1888.

(51 & 52 VICT. C. 64.)

No criminal prosecution shall be commenced against any proprietor, publisher, editor, etc., of a newspaper for libel, without the order of a judge (s. 8).

A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged (s. 3).

Newspaper reports of proceedings of public meetings and of certain bodies and persons are privileged (s. 4).

LIBRARIES OFFENCES ACT, 1898.

(61 & 62 Vict. c. 53.)

For the Punishment of Offences in Libraries.

S. 2.—Any person who, in any library or reading-room to which this Act applies (*n*). to the annoyance or disturbance of any person using the same—

(1) behaves in a disorderly manner ;
(2) uses violent, abusive, or obscene language ;
(3) bets or gambles ;
(4) or who, after proper warning, persists in remaining therein beyond the hours fixed for the closing of such library or reading-room,

shall be liable on summary conviction to a penalty of forty shillings.

LICENSING LAWS.

The Licensing Acts regulate the sale of intoxicating liquors ; the police are required to enforce their provisions, being authorised to enter on licensed premises at any time to prevent or detect offences.

Inns (*o*) and alehouses have for centuries been under the surveillance of justices of the peace (5 & 6 Edw. 6, c. 25). During the

(*n*) Public libraries under Act of 1892 and libraries maintained by Registered Societies Acts of 1893 and 1896, or by any registered trade union (s. 3).

(*o*) An "inn" is a place instituted for passengers and wayfaring men. A tavern is not within this definition. See Treat. on Inns and Taverns, 47 J. P. 579. No one has a right to insist on being served in a tavern or alehouse more than in any other shop, and the occupier has a right to request a person to leave if he does not wish him to remain on the premises, and if necessary to eject him (*R.* v. *Rymer* (1877), 2 Q. B. D. 136 ; 41 J. P. 199 ; *Sealey* v. *Tandy*, [1902] 1 K. B. 296 ; 66 J. P. 19).

A "beershop" is a place where beer is sold, even if it is consumed off the premises (*Holt* v. *Collyer* (1881), 45 J. P. 456).

It is an indictable offence for an *innkeeper* to refuse to entertain a traveller (*R.* v. *Ivens* (1835), 7 C. & P. 213), the only legal excuse being that there is no accommodation or that the traveller is an unfit guest (*R.* v. *Rymer*, *supra* ; *R.* v. *Sprague*, *infra*).

The landlady of the Hautboy Inn, Ockham, was indicted at the Kingston Surrey Quarter Sessions, April 5th, 1899, for refusing to supply, without sufficient cause, to a traveller victuals for which she was willing to pay. The prosecutrix, who was bicycling in what is known as a "rational" dress, was refused admittance to the coffee room but was offered the bar parlour to have luncheon in. The jury were directed to decide whether the room was a fit and proper one for this purpose. They acquitted the defendant. The legal principle as to whether an innkeeper may or may not refuse to serve a lady in "rationals" was not decided (*R.* v. *Sprague* (1899), 63 J. P. 233 and Treat. 227).

past century special Acts have been passed defining, controlling, and in some cases limiting these powers.

All persons who retail intoxicating liquors (wholesale dealers in spirits and wine merchants excepted) have to obtain a certificate from the justices. The licences to sell are obtained from the Excise, and remain in force for one year; for the renewal of the licence it is necessary to obtain a certificate from the magistrates at their annual licensing sessions.

The principal statutes which concern the police are:

1. The Alehouse Act, 1828, as to granting of licences, procedure, etc., is the foundation of licensing law.
2. The Beerhouse Acts include a number of statutes relating to special licences for particular liquors, of which the Wine and Beerhouse Act of 1869 is the most important.
3. The Refreshment Houses Act of 1860.
4. Beer Dealers' Wholesale and Retail Licences Acts (*p*).
5. The Licensing Acts of 1872 and 1874, contain the police law *re* sale and supervision.
6. The Intoxicating Liquors (Sale to Children) Act, 1901 (which repealed the Act of 1886).
7. Licensing Act, 1902.
8. Licensing Act, 1904.

A full exposition of the licensing laws will be found in Paterson's Licensing Acts, 16th edition (published by the publishers of this work).

Summary.

The entire licensing laws may be thus summarised:

The Act of 1828 contains the machinery for holding licensing meetings (now amended by Act of 1902).

The Act of 1889 relates to special licences for the sale of particular liquors.

The Acts of 1872 and 1874 contain the police law relating to sale of liquors by retail and the supervision of licensed premises.

The Intoxicating Liquors (Sale to Children) Act, 1901, is known as the Child Messengers Act, and prohibits the sale of liquor to children in public-houses except in corked and sealed vessels. See p. 332, *post*.

The Licensing Act, 1902, amends the law as to drunkenness and licensing, and provides for the registration of clubs. An epitome

(*p*) No license for sale by retail of beer under the Revenue Act, 1863, is to be granted without production of justice's certificate. The Beer Dealers Retail Licences Act of 1880 and Amendment Act, 1882, are repealed by Licensing Act, 1902 (Sched.).

of its provisions as regards "Drunkenness," is given under title "DRUNKENNESS," p. 231, *ante*.

The Licensing Act of 1904, refers to quarter sessions the question of non-renewal of licences in certain cases, and provides for the payment of compensation in cases of non-renewal.

The Act is very important to justices; an abstract of its provisions is given under heading "JUSTICES" (Section VI.), p. 47, *ante*.

The Alehouse Act, 1828 (9 Geo. 4, c. 61), is the root of the jurisdiction of licensing justices. For synopsis of sections, see p. 318, *post*.

The Act provides that the necessary justices' licences are to be granted at the general annual licensing meeting ("brewster sessions").

These sessions, formerly held in August or September, are now (Licensing Act, 1902, s. 14), to be held during the first fortnight of February in each year in every licensing district.

Justices shall, at the annual licensing meeting, appoint special sessions for purposes of transfer of licences to persons intending to keep inns theretofore kept by other persons.

Sections 4, 14, of the Act of 1828, relate to transfers, change of occupancy, etc.

NEW LICENSES.

Licensing justices have an absolute discretion as to the granting or refusing of new licences, but this discretion must be exercised "judicially and not capriciously." See *Sharp* v. *Wakefield*, n. (*a*), p. 315, *post*.

A licence granted by justices has to be confirmed (*q*) by a committee before it becomes valid, and this committee, which before January 1st, 1905, was known as the "County Licensing Committee" (Licensing Act, 1872, s. 37), is now, under the Licensing Act of 1904, replaced by a committee (*r*) appointed by the quarter sessions (Licensing Act, 1904, ss. 4, 5 (2)).

The Act of 1904 amends the law as regards the extinction of on-licences and the grant of new licences and makes some alterations as to transfers; it, however, makes practically no alteration as regards *the authority who grant* or the authority who confirm a new license beyond substituting the committee appointed by the quarter sessions for the county licensing committee. But the Act considerably extends the existing power of justices as regards new licences. In granting a new on-licence, they may attach to the

(*q*) Under Licensing Act, 1902, s. 19, "confirmation" is not to take place till twenty-one days after the grant of a new licence.

(*r*) *Boroughs.*—As to licensing committees in boroughs, see Licensing Act, 1872, s. 38, and Act of 1874, ss. 21, 25, and Licensing Act, 1904, s. 5 (4).

grant such conditions as to payment and tenure as they may think proper. They may also grant what is practically a lease of the licence, viz., a licence for seven years.

Procedure.

The notice of intention to apply for a new licence must set forth the name and address of the applicant, situation of house, and description of licence applied for, and other particulars required by the Licensing Acts, 1828 to 1886.

The notice must be in writing, and must be served on the overseers, the superintendent of police, the licensing justices' clerk (Licensing Act, 1902, s. 18), twenty-one days at least before the date of the meeting at which the application is to be made. The notice must be affixed on the door of the house or shop and on the door of the church or chapel of place, for two consecutive weeks, and an advertisement must be inserted in some paper circulating in the place in which the premises are situated.

Where the application is for an on-licence, a plan of the premises must be deposited with the justices' clerk (Licensing Act, 1902, s. 11).

Provisional licences for new premises.—A provisional grant of licence for new premises in course of construction may be made by justices if satisfied with the plans submitted to them of such house or premises, but such licence requires confirmation (Licensing Act, 1874, s. 22).

When an adjoining house is added to premises, it is for the justices to determine whether it is substantially the same house or a new house (*R.* v. *Smith* (1866), 31 J. P. 259).

Qualification of premises for licences.—S. 45 (Act of 1872) contains the conditions regarding valuation of premises and accommodation required before a licence (for consumption on premises) can be granted—elsewhere than in metropolis or in town of 10,000 inhabitants, an annual value of £15; or if the licence do not authorise the sale of spirits, £12; one room (or two rooms if a spirit licence) to be set apart for the accommodation of the public.

Renewals.

Under the law, as it formerly stood, existing licences were renewed as a matter of course, unless notice of objection was given. If objection was taken to the renewal of the licence the justices had an absolute discretion, which, however, had to be exercised judicially to refuse (*s*) or grant the renewal subject to an appeal to quarter sessions.

(*s*) They could refuse to renew on the ground that the house was too far from police supervision and was not wanted in the neighbourhood

The great change made by the new Act (Licensing Act, 1904), is that it restricts the power of licensing justices to refuse to renew an existing on-licence. They can only refuse on certain grounds, namely: That the premises have been ill-conducted; that they are structurally unsuitable; that the character of the proposed licensee is unsatisfactory; or that the renewal would be void; while in all other cases the licensing justices can only report the question of refusing to renew to quarter sessions, and quarter sessions cannot refuse to renew except on payment of compensation (Licensing Act, 1904, s. 1).

The compensation (*t*) is not provided by the State, but by the trade itself, under a mutual insurance scheme set up by the Act (Licensing Act, 1904, s. 3).

The procedure as to objecting to the renewal of on-licences and hearing objections, will be the same as heretofore. No formal notice has to be given by a licensed person for the renewal of his licence, but he or someone on his behalf should make an application, otherwise the licence would drop (Licensing Act, 1872, s. 42).

The applicant need not attend in person at the licensing meeting unless required so to do (*u*).

The justices shall not entertain any objection to renewal of licence unless written notice of same has been served on holder at least seven days before the meeting (*x*).

The justices shall not receive any evidence which is not given on oath (*y*) (Licensing Acts, 1872, s. 42 and 1874, s. 26).

(*Sharp* v. *Wakefield*, ([1891] A.C. 173; 55 J. P. 197; affirming 22 Q. B. D. 239; 53 J. P. 20), or that there were too many houses in the neighbourhood (*R.* v. *Howard* or *Farnham JJ.*, [1902] 2 K. B. 363; 66 J. P. 579).

(*t*) The amount of compensation is the difference between premises with a licence and premises without a licence.

(*u*) The MASTER OF THE ROLLS said, in *Sharp* v. *Wakefield*, *ante*, that the licensee is only relieved from attending *in person*, and if he does not so attend he must attend by someone authorised to apply.

(*x*) In *R.* v. *Farquhar* ((1874), L. R. 9 Q. B. 258; 39 J. P. 166), it was held that renewal cannot be refused without giving notice to the applicant to attend and answer objections.

(*y*) In the case of *R.* v. *Merthyr Tydvil JJ.* ((1885), 14 Q. B. D. 584; 49 J. P. 213), it was stated that the justices adjourned their meeting upon objections stated *by a constable* in the justices' private room. The Queen's Bench Division strongly condemned the justices for having private conversation with a police officer about a case on which they were to adjudicate. In a later case a rule for a *mandamus* was made absolute, there having been a private conference with the superintendent of police and no statement of grounds of refusal (*R.* v. *Bartlett* (1885), 49 J. P. 772).

Where notice to attend was given, and no specific objection was made, but the *superintendent of police* proved on oath a conviction, and the

Ante-1869 licences. — The Licensing Act, 1904, brings the *ante*-1869 beerhouses under the control of the justices. Under the law, prior to that Act, the justices could only take away these licences on one or more of the four grounds mentioned in s. 8 of the Wine and Beerhouse Act, 1869 (*a*). The Act of 1904 enables justices to deal with *ante*-1869 beerhouses in exactly the same way as they can deal with other licensed premises. Compensation in the case of *ante*-1869 licences will be higher than that given in the case of other licensed premises.

Under the Licensing Act, 1902, s. 10, justices have a discretion to grant or refuse renewals of "off" licences on any ground appearing to them sufficient, except to persons who held such licences on June 25th, 1902. Licences can only be refused to them on one or more of the "four grounds" (*b*) mentioned in s. 8 of the Wine and Beerhouse Act, 1869, or on one or more of the *three* grounds mentioned in s. 10, Licensing Act, 1902.

As regards certificates to sell beer, cider, or wine to be consumed on the premises, if the house was licensed on May 1st, 1869, and the justices have not since made any order taking away the privilege and the privilege has not been lost, then the justices cannot refuse such renewal, except on one or more of the grounds already specified (Wine and Beerhouse Act, 1869, s. 19, and Amendment Act of 1870, s. 7).

Renewals.—Off licences.—The discretion of licensing justices as to the renewals of off-licences is not interfered with by the Licensing

justices afterwards called him into their private room and subsequently refused renewal without stating the reason, *mandamus* was granted, the court not being satisfied that justices had not been influenced by what had been said in private (*R.* v. *Redditch JJ.* (1885), 50 J. P. 246).

The Master of the Rolls held, in the Appeal Court, it was as bad for justices to ask in open court as in a private room a question of a police constable affecting a licence under consideration, *if the parties had no opportunity of questioning the constable on oath* (*R.* v. *Newcastle JJ.*, Times, February 3rd, 1877).

(*a*) The decision in *Sharp* v. *Wakefield*, *ante*, did not affect renewal or transfer of beerhouse licences granted before May 1st, 1869, the renewal of which can only be refused on one of the "four grounds" specified in s. 8 of the Wine and Beerhouse Act, 1869, nor does it affect the renewal of a transfer of "off" wine, spirit, liquor, sweets or cider licences coming within the terms of s. 10 (4) of Licensing Act, 1902, which can only be refused on one of the same grounds. Beerhouse licences "on" or "off" granted after 1869 are subject to the justices' discretion.

(*b*) The grounds are shortly these:

1. Unsatisfactory character of applicant.
2. Disorderly character of premises.
3. Disqualification of applicant.
4. Disqualification of premises.

Act of 1904, and where the renewal of any such licence is refused on the ground of redundancy or any other similar ground or indeed on any ground whatever, no compensation is payable. The holders of such licences are not required to contribute to the compensation fund.

By the Act of 1902 persons who held off-licences for wine, spirits, liquors, sweets, or cider on June 25th, 1902, cannot be refused renewals except on one of the "four grounds" mentioned in s. 8 of the Wine and Beerhouse Act, 1869, or for misconduct in the management of their business (Licensing Act, 1902, s. 10).

Transfers.

Sections 4 and 14 of the Alehouse Act of 1828 relate to "transfers." A notice for a transfer must be signed by the applicant or his authorised agent, and must set forth the name of the person to whom it is intended to transfer the licence, together with the place of his residence and his trade or calling during the six months preceding the time of serving such notice (Licensing Act, 1872, s. 40 ; Licensing Act, 1902, s. 16).

Fourteen days prior to the special sessions at which application is to be made, the applicant must serve a notice on the overseers and the superintendent of police of district. The notice previous to an application for a transfer of licence was regulated by the Alehouse Act, 1828, s. 10, which is repealed : the provisions of s. 40 of Licensing Act, 1872, now apply. There is, however, a proviso at the end of s. 14 of the Act of 1828 which is not repealed, and where that applies notice must be given in accordance with that section (*R.* v. *Nicholson* (1899), 64 J. P. 388).

Section 16 of the Licensing Act, 1902, contains important provisions relating to "transfers" :

(1) *As to attendance of parties.* — The persons interested are required to attend unless the justices "for good cause shown in any particular case" dispense with their attendance.

(2) *As to "repeated applications."* — For the purpose of preventing repeated applications, the licensing justices may make regulations determining the time which must elapse after the hearing of one application for a licence under s. 4 or s. 14 of the Alehouse Act, 1828, before another application may be made in respect of the same premises, but they may "for good cause shown" dispense with the observance of the regulations in any particular case.

(3) The provisions of the Licensing Act, 1872, s. 40 (2), as to notices of intention to transfer shall apply *to all cases* (*c*) of applications under ss. 4 or 14 of the Alehouse Act, 1828.

(4) The provisions of the Wine and Beerhouse Act, 1870, s. 4 (4), with respect to the adjournment of an application for a transfer shall apply to all licences in cases arising under ss. 4 or 14 of the Alehouse Act, 1828, and any authority in force under the Licensing Act of 1842 shall continue in force till the hearing of the adjourned application.

Temporary Transfer Protection Orders, etc.

An Act was passed in 1842 (5 & 6 Vict. c. 44) "to facilitate the transfer of licences." Power was given to justices acting in petty sessions—in the intervals between the special or transfer sessions —to endorse on a licence which it was intended to transfer an authority to the proposed transferee, called a "protection order," to carry on the business of a licensed victualler on the same premises till the next ensuing special or transfer sessions.

The Licensing Act of 1902, s. 15, requires that seven day's notice of intention to apply to "a petty sessional court" for such order or authority must be given to the superintendent of police of the district, but in any case of urgency the court may dispense with such notice if satisfied that such notice to the police as is reasonable under the circumstances has been given.

Fresh licences in case of death.—Heirs, executors, or administrators (or assigns in bankruptcy) incur no penalty in temporarily carrying on business of licensed person who dies before the expiration of his licence (Licensing Act, 1872, s. 3; Alehouse Act, 1828, s. 14).

Licences lost or mislaid.—The Licensing Act of 1842 (5 & 6 Vict. c. 44) empowers justices to receive a certified copy of licences lost or mislaid, and s. 41 of the Licensing Act, 1872, extends the power to the reception of a copy of licence in the event of a licence being "wilfully withheld by the holder thereof."

(*c*) The notices referred to are those which have to be signed by the applicant or his agent, setting forth name of the proposed transferee, his place of residence, and trade or calling. Copies will now have to be served in all cases of "contingencies" (transfers consequent on death, bankruptcy, disqualification, etc.), as well as in cases of transfers on removal, on one of the overseers and on the superintendent of police fourteen days before transfer day.

The licences referred to are known as "transfers on removals" and "transfers on contingencies."

THE ALEHOUSE ACT, 1828

(9 GEO. 4, C. 61).

An Act to regulate the grants of Licences (d) to Keepers of Inns (e) and Alehouses, etc.

S. 1.—General licensing meetings are to be held annually in counties [as to date, see Licensing Act, 1902, s. 14, *post*]. The justices may grant licences to such persons as they shall, in the exercise of their discretion, "deem fit and proper."

S. 2.—Justices to meet twenty-one days (at least) before general annual licensing meeting, and fix day and hour for holding same, by precept under their hands, such precept to be directed to the high constable (*f*) of the division or place, requiring him within five days of receipt thereof to order notices to be affixed on door of church, chapel, etc., and served on each justice in division, and on each innkeeper or person who shall have given notice of his intention to keep an inn (*e*).

S. 3.—As to adjournment of meetings. See s. 5.

S. 4.—As to special sessions for transferring licences.

S. 5.—As to notice to be given when meetings are adjourned.

S. 6.—Qualification of justices.

Ss. 7, 8.—Qualifications and jurisdiction of justices for liberties. As to what justices may act, etc.

S. 9.—Questions respecting licences are to be determined by majority of justices present at meeting (*g*).

Ss. 10, 11.—As to notice required in case of application for a licence or transfer.

S. 12.—Any person hindered by sickness from attending meeting may authorise another to attend for him.

S. 13.—As to form of licence,—in part repealed.

S. 14.—As to change of occupancy, etc.,—in part repealed.

S. 15.—Regarding fees to be paid for licences.

S. 16 debars sheriff's officer from becoming a licensee.

By s. 17 no licence for the sale of excisable liquors to be drunk on premises can be granted by Excise to any person unless such person shall have previously obtained a licence from justices under this Act.

Ss. 20—23 and 25—28 are repealed, except as to renewals and transfers (ss. 4, 14).

S. 24 provides for recovery of penalties from justices.

(*d*) The matters of transfer, renewal, etc., are specially treated of at pp. 313 to 317, *ante*.

(*e*) An inn is a place instituted for passengers and wayfaring men. A tavern is not within this definition (47 J. P. 57). It is an indictable offence for an *innkeeper* to refuse to entertain a traveller (*R.* v. *Ivens* (1835), 7 C. & P. 213), the only excuses being that the innkeeper has no accommodation, or that the traveller is an unfit guest (*R.* v. *Rymer* (1877), 2 Q. B. D. 459; 41 J. P. 199).

(*f*) *Re* "high constables," see CONSTABLES, p. 131, *ante*.

(*g*) See also Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 37—50, *post*.

S. 29.—As to adjustment of costs.
S. 30.—Actions against justices, constables, etc., must be commenced within three months after cause of action.
Ss. 31—34.—As to convictions, forms, returns, etc.
S. 35 repeals a number of then existing Acts dating back to 5 & 6 Edw. 6.
S. 36.—Saving clause—as to universities—London—Excise and sale of beer at fairs in certain cases.
S. 37.—Interpretation clause.

SCHEDULES TO ACT.

Sched. A. gives form of notice referred to in s. 2.
Sched. B.—Notice of intention to apply for transfer.

LICENSING ACT, 1842

(5 & 6 VICT. C. 44).

An Act for facilitating the Transfer of Licences (*h*).

S. 1 empowers justices in petty sessions to transfer licences at any time when no special session shall be holden for the place for sale of liquor on same premises.
S. 2.—If licence be lost a certified copy (*i*), when endorsed, shall be considered valid.
S. 3.—As to fee, 2*s.* 6*d.*
S. 4 repealed.
S. 5 prohibits sale of liquor on board vessels "moored" during "closing hours."
S. 6.—Act not to extend to the universities.

THE BEERHOUSE ACTS.

These comprise a group of statutes, including—
The Beerhouse Act, 1830, with amending Act of 1840 (*i*);
The Beerhouse Act, 1834 (*h*);
The Wine and Beerhouse Act, 1860 (*i*); and
The Wine and Beerhouse Act, 1869, which is the most important of these statutes.

THE WINE AND BEERHOUSE ACT, 1869.

This Act, amended by Act of 1870, brought under the control of justices certain licences permitting shopkeepers to retail wine in

(*h*) The Beerhouse Act, 1834, divided traders into two classes: those with licences for consumption *on the premises*, and those selling for consumption *off the premises*, usually referred to as "on" and "off" licences. A "beershop" is a place where beer is sold, even if it be consumed on the premises.
The Beerhouse Act, 1840, prescribed a "rating value" for premises, for which s. 46 of the Licensing Act, 1872, substituted an "annual value."
(*i*) As to sales in bottles by shopkeepers.

bottles, previously granted by the Excise under the Refreshment Houses Act, 1860.

Section 7 of Act sets forth the procedure *re* applications for new licences. See also Licensing Act, 1902, s. 18.

Under s. 8 of Act justices could only refuse to grant certificates on certain grounds, but 45 & 46 Vict. c. 34, following 43 & 44 Vict. c. 6, s. 1, now gives justices absolute discretion (*k*).

They must, however, give reasons for refusal if the application be under the Act of 1869. The licences can only be refused on one or more of the grounds mentioned in s. 8 of Act (*l*).

REFRESHMENT HOUSES.

Under the Refreshment Houses Act, 1860, no person can keep open a house for public refreshment, resort, and entertainment between 10 p.m. (Revenue Act, 1861) and 5 a.m., which is not licensed for the sale of beer, cider, wine, or spirits, without a licence "to keep a refreshment house" (*m*) (s. 6 of Act). See also Licensing Act, 1872, s. 28; also s. 27, which prohibits liquor being supplied at refreshment house during hours when such house would be closed if it were an inn.

No licence is required when a refreshment room in which no intoxicating liquor is sold is closed before 10 P.M.

Restaurant keeper's licences.—Notwithstanding anything contained in the Beerhouse Acts, no person being a keeper of a restaurant or eating-house shall be disqualified from receiving a licence under those Acts by reason only of the premises not being a dwelling-house or of his not being the resident holder and occupier thereof.

CLUBS.

The law as regards clubs has lately undergone considerable modification: the matter is dealt with under Part III. of the Licensing Act, 1903. Clubs have to be registered, and an annual

(*k*) See *Sharp* v. *Wakefield*, note (*a*), p. 315, *ante*, and 331, *post*.

(*l*) See note (*a*), p. 315, *ante*. Justices are bound to state on which of the four grounds they base their decision if they refuse to renew (*R.* v. *Thomas* (1892), 40 W. R. 478).

(*m*) For definition of "refreshment house," see 39 J. P. 418. A dining and concert room where beer is not sold, but merely procured, does not require a licence (*Taylor* v. *Oram* (1862), 1 H. & C. 370; 31 L. J. 252; 7 L. T. 68; Stone's Justices' Manual, 37th edit., p. 491), but a "cafe," where persons sat down and took coffee and cigars, was held to be a place of refreshment (*Muir* v. *Keay* (Birmingham) (1875), 40 J. P. 120). A shop where persons drank lemonade at the counter has been held to be a refreshment house (*Howes* v. *Inland Revenue* (1876), 41 J. P. 423), as was also a temperance hotel (*Kelleway* v. *Macdougal* (1881), 45 J. P. 207).

return has to be sent to justices' clerks. No licence is required for the dispensing of excisable articles under certain conditions amongst the members of a *bonâ fide* club, but a club in which the manager is the proprietor, in which liquor is sold without accounts kept or statement submitted, is a "pretended club," and the manager may be convicted. See *Evans* v. *Hemingray* (1888), 52 J. P. 134. Other cases pertinent are *Bourjer* v. *Percy Supper Club*, [1893] 2 Q. B. 154; 57 J. P. 470; *Newman* v. *Jones* (1886), 17 Q. B. D. 132; 50 J. P. 373; *Graff* v. *Evans* (1882), 8 Q. B. D. 373; 46 J. P. 262; *Stevens* v. *Wood* (1890), 54 J. P. 742; but see now Licensing Act, 1902 (Part III.).

CANTEENS.

A canteen carried on by a tenant for his own profit requires the authority of the Secretary of State or the Admiralty, and also Excise licenses (Licensing Act, 1902, s. 23). No justice's licence is needed, s. 174 of the Army Act, 1881, being repealed.

PACKET BOATS.

The Passage Vessel Licences Act, 1828, and other Acts, deal with sale of liquor in packet boats.

WHOLESALE AND RETAIL LICENCES—SPIRITS, ETC.

The Beer Dealers Retail Licence Act, 1880, and the Amendment Act of 1882 which contained provisions for retail licences for consumption off the premises, have been repealed by Licensing Act, 1902 (Sched.).

SPIRITS.

Wholesale spirit dealers are prohibited from selling by retail under any Inland Revenue licence (except in premises exclusively used for the sale of intoxicating liquor, mineral waters, etc.) without justices' licence authorising same (Licensing Act, 1872, s. 68). As to sale of "Liqueurs," see Licensing Act, 1872, s. 69.

SWEETS.

Sweets or made wines are to be construed to mean any liquor made from fruit and sugar mixed with any other material which has been fermented. A licence for the sale of "sweets" is granted in the same manner as if sweets were wine (Licensing Act, 1872, s. 94).

REFRESHMENT HOUSES ACT, 1860.
(23 & 24 VICT. C. 27.)

S. 1.—As to duties for licences to keep refreshment houses (*n*).

S. 2.—Duties to be deemed to be Excise duties.

S. 3.—Every person keeping a shop can take out a licence to retail wine not to be consumed on the premises.

(*n*) As to definition of "refreshment house," see 30 J. P. 418.

S. 4.—A sale of wine under two gallons, or of less than one dozen quart bottles, at one time, shall be deemed a sale by retail.

S. 6.—As to licences for certain refreshment houses (*o*).

S. 7.—Confectioners and eating-house keepers can take out wine licences.

S. 8.—Wine licences not to be granted to houses under a certain annual value.

S. 9.—Penalty for keeping unlicensed refreshment house, £20.

S. 10.—Licences to be granted by Excise or authorised person.

S. 11.—Date, expiration, and renewal of licences.

S. 12.—On death of a licensed person, his representative may be authorised to conduct the business for remainder of term.

Ss. 13, 14 and 15 are repealed by 32 & 33 Vict. c. 27.

S. 16.—A list of licences is to be kept by supervisors of Excise for inspection.

S. 17.—Repealed by Licensing Act, 1872.

S. 19.—Penalty for selling wine by retail without licence, £20.

S. 21.—All liquor sold as foreign wine shall be deemed and taken to be foreign wine ; and any fermented liquor containing more than 40 per cent. of proof spirit shall be deemed to be spirits.

S. 23.—Licensed retailers are to make entry of houses with Excise.

S. 24.—Power to Excise officers to enter retailers' premises.

S. 25.—Person licensed to retail wine having spirits on premises are liable to forfeiture of spirits found and of licence.

S. 45.—The provisions of the Act are not to affect the Universities, the Vintners of the city of London, or the borough of St. Albans.

WINE AND BEERHOUSE ACT, 1869.

(32 & 33 VICT. C. 27.)

An Act to amend the Law for Licensing Beerhouses, and to make alterations respecting Sale of Beer, Cider, and Wine.

The first three sections of Act recapitulate certain provisions of special Acts.

S. 4.—No licence or renewal of licence for sale by retail of beer, cider (*p*), or wine, under said recited Acts shall be granted except upon production of a certificate under this Act.

S. 5.—Certificates to be granted by justices at annual licensing meeting.

S. 7.—**Application.**—Every person intending to apply to the justices for a certificate under this Act shall, twenty-one days at least before he applies, give notice in writing setting forth particulars of application to one of the overseers of the township or place, and to some constable or peace officer acting within such parish, township or place. In the case of a house or shop not theretofore licensed, notice must (twenty-eight days before application is made) be affixed and maintained on two consecutive Sundays on the door of such house or shop, and on the door of the church

(*o*) See also Licensing Act, 1872, s. 41, *post*.

(*p*) The term "beer" shall include ale and porter, and the term "cider" shall include perry (s. 2 of Act).

or chapel of the parish (*q*) or place in which such house or shop is situate.

S. 8.—Provisions of Alehouse Act, 1828 (9 Geo. 4, c. 61), to apply to certificates under Act.

S. 11.—As to forgery of certificate.

Ss. 12—18 of Act are repealed.

S. 19.—As to renewals (ante-1869 licences).

S. 20.—Nothing in the Act is to affect the privileges of the Universities, the Vintners of the city of London, or the city of St. Albans.

Licensing Acts, 1872 and 1874.

The Licensing Acts of 1872 and 1874 contain provisions regarding the supervision and control of licensed premises (*r*).

A constable is authorised at all times to enter on licensed premises for the purpose of preventing or detecting (*s*) offences (Act of 1874, s. 16). As to issue of search warrant see s. 17 of Act of 1874.

Police Supervision.

Police should frequently inspect public-houses and beer-houses situated within their district, but they should carefully avoid remaining on premises longer than their duty actually requires. It is an offence on the part of the publican to allow them so to do.

Refusing to quit.—Persons drunk or violent refusing to quit licensed premises on request may be forcibly expelled by a constable (*t*) (Licensing Act, 1872, s. 18). See p. 325, *post*.

As to "gaming" on licensed premises, see p. 325, *post*.

The principal offences of which police are required to take cognizance under the Act of 1872, are illicit sales and offences against public order.

Illicit Sales.

Sections 3—8 of Act, 1872, deal with illicit sales; selling intoxicating (*u*) liquor without a licence, or elsewhere than authorised by licence, or contrary to conditions of licence, subjects

(*q*) S. 18 of Licensing Act, 1902, requires notice to be also inserted in local newspaper.

(*r*) "Premises" include every room, closet, cellar, yard, stable, outhouse, shed, or any other place whatsoever belonging or in any manner appertaining to such licensed house or place.

(*s*) A constable *bonâ fide* inspecting is entitled to admission, although he may not have any special grounds of suspicion (*R.* v. *Dobbins* (1887), 48 J. P. 182. See also *Duncan* v. *Dowding*, [1897] 1 Q. B. 575; 61 J. P. 280).

(*t*) A constable is not authorised to arrest the offender whilst on the premises.

(*u*) "Intoxicating liquor" means spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot legally be sold without a licence from the Inland Revenue (Licensing Act,

licensee to penalties (*x*) (s. 3); sale of spirits to young persons under sixteen (*y*) (s. 7); sale by other than standard measure (s. 8).

Sections 5, 6, deal with evasion of law as to drinking on premises contrary to licence. See case of *Bath* v. *White* (1878), 3 C. P. D. 175; 42 J. P. 375, *post*.

Section 9 prohibits the making or using of any "internal communication" between licensed premises and house of public resort. See also Licensing Act, 1902, s. 11 (2).

Section 10 deals with illicit storing of liquor.

Under s. 11, licensed persons are required to keep their names affixed to premises.

OFFENCES AGAINST PUBLIC ORDER.

Sections 12—18 (Act of 1872) deal with offences against public order (*a*).

Section 12 deals with cases of persons "found drunk" in any highway or public place (*b*), or on licensed premises. See title "DRUNKENNESS," *ante*, p. 231.

[This section gave no power to police to "apprehend" for simple drunkenness, and it was often difficult to deal with persons who were merely "found drunk." Under the provisions of the Licensing Act, 1902, s. 1, a constable can now "apprehend" any one found drunk and "incapable." As to former procedure, see 45 J. P. 509].

As to offences by "habitual drunkards," see title "INEBRIATES ACT, 1898," *ante*, p. 295.

Under s. 13 of Act, licensed persons are liable to penalties for permitting drunkenness to take place on their premises, or for selling liquor to a drunken person.

By the Licensing Act, 1902, s. 4, it lies on the licensed person to prove that he and his employees took "all reasonable steps for preventing drunkenness on the premises."

Sections 14, 15 as to disorderly houses and brothels—

Licensed persons are liable to penalties if they knowingly permit their premises to be the habitual resort of prostitutes, or if they

1872, s. 74). The sale of spruce or black beer is not affected by the Act (1872), but the word "beer" includes botanic beer which contains more than two per cent. of proof spirit (*Howarth* v. *Minns* (1887), 51 J. P. 7). See also *Leah* v. *Minns* (1883), 47 J. P. 198.

(*x*) The penalties prescribed vary from £10 to £100, or imprisonment and disqualification as a licensee (s. 3).

(*y*) The Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7. c. 27), prohibits sale of liquor to child under *fourteen*, except in corked and sealed vessels.

(*a*) To this list must now be added those contained in the Intoxicating Liquors (Sale to Children) Act, 1901, and the Licensing Act, 1902.

(*b*) As to what is a "public place," see Licensing Act, 1902, s. 8.

allow such persons to remain on their premises "longer than is necessary for the purpose of obtaining reasonable refreshment."

Harbouring police.—If any licensed person knowingly harbours or treats or attempts to bribe any constable, he shall be liable to a penalty of £10 (s. 16). It is an offence under this section to allow a constable to remain on licensed premises, although no liquor is supplied to him.

Gaming.—Section 17 relates to gaming on licensed premises. The rule is that no game, however lawful in itself, if played for money or money's worth, can be permitted on licensed premises. See "BETTING AND GAMING," *ante*.

Excluding drunkards.—Any licensed person may turn out from his premises any person who is drunk or disorderly, and police are required at request of licensed person or his agent or servant, to expel or assist in expelling any such person, using only such force as may be required for the purpose. There is no authority to arrest—only to eject (s. 18). See p. 83, *ante*.

[**Adulteration.**—Sections 19—22 of Act which dealt with adulteration of liquor are now repealed.]

Riots.—Justices are empowered to close public-houses in case of riot or tumult (s. 23).

CLOSING HOURS.

Section 24, Act of 1872, regarding closing hours, is repealed by s. 33 of Act of 1874, its provisions being re-enacted in amended form by s. 3 of that Act.

"Closing hours" (outside Metropolitan district) are—week days, 10 P.M.; in "populous places" (*c*) 11 P.M.; premises can open at 6 A.M. [Legal time is Greenwich mean time (43 & 44 Vict. c. 9).]

On Sundays (*d*), Good Friday, and Christmas Day, premises can remain open from 12.30 to 2.30 P.M., and from 6 till 10 P.M.

(*c*) Section 32 of Act of 1874 defines a "populous place" as any area with a population of *not* less than one thousand, which by reason of the density of such population the county licensing committee may by order determine to be a populous place.

"*Town*" means an urban sanitary district as described for the purposes of the Public Health Act, 1875, but no such district shall be deemed a town unless it contains 1,000 inhabitants.

(*d*) *Sunday closing.*—The Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61), and other statutes deal with the closing of houses on Sunday in Wales.

Refreshment houses.—Section 27 of Licensing Act, 1872, places refreshment houses under same restrictions as inns, regarding sale of liquor during closing hours.

[Section 6 of Act of 1874 empowers justices to alter the hour of opening on Sundays to 1 P.M. if desirable.]

As to early closing licences (*e*) and Sunday licences, see heading "OCCASIONAL AND OTHER LICENCES," p. 327, *post*.

Found on premises.—Any person found on licensed premises during closing hours (inmates, lodgers, and travellers excepted), are liable to penalties. A constable can demand name and address of such person, and may require evidence of correctness of same. Offenders failing to give required information may be apprehended. As to *bonâ fide* traveller, see p. 327, *post*.

Under s. 10 of Licensing Act, 1874, nothing in Act is to preclude the sale of liquor at railway stations to persons arriving at or departing from station by railroad.

BONA FIDE TRAVELLER.

By s. 25 of the Licensing Act, 1872, any person found on licensed premises during closing hours—inmates, lodgers, and travellers excepted—are liable to penalties.

Much litigation has arisen with respect to this section.

There is no definition of the word "traveller," and it is difficult to give one. The section of Act requires that a person to be deemed a traveller must have lodged during the preceding night at least three miles distant, but that is only one *essential*. It has been decided that persons taking a drive or walk for business or pleasure, even for a short distance, were travellers, but not if the journey were undertaken "merely because they desired to go to a public-house and obtain drink" (ERLE, C.J., in *Taylor* v. *Humphries* (1864), 17 C. B. (N.S.); 34 L. J. 1; 13 W. R. 136; Stone's Justices' Manual, 37th edit., p. 515). See *Atkinson* v. *Sellers* (1858), 28 L. J. 12; 23 J. P. 71; *Peache* v. *Coleman* (1866), L. R. 1 C. P. 134; 35 L. J. 118; and *Peplow* v. *Richardson* (1869), L. R. 4 C. P. 168; 33 J. P. 407.

The doubts, however, which existed appear to a great extent to have been set at rest by the decision in *Penn* v. *Alexander*, a case heard in 1893, known as the Little Houghton case, the facts of which were as follows:

About 130 men walked from Northampton on a Sunday evening to Little Houghton, distant three miles and a half, and were served with beer on tables set out in a yard for that purpose. No one

(*e*) *Night houses.*—As to closing of "night houses," see Licensing Act, 1874, s. 11.

was served with more than a pint, nor without being asked where he came from. The justices found as a fact that the men walked to Little Houghton solely to get beer, and were not *bonâ fide* travellers. Coleridge, L.C.J., and Cave, J., differed, and the case was re-heard before a court of five judges, sitting as a divisional court for the purpose. The conviction was affirmed, Cave, J., dissenting (*Penn* v. *Alexander*, [1893] 1 Q. B. 522; 41 W. R. 392; 62 L. J. 65; 68 L. T. 355; 57 J. P. 118; Treat. 131).

A railway porter on a Sunday morning, after attending to his work, distant between two and three miles from where he slept the previous night, extended his walk to a beerhouse more than three miles from his house, and had beer and bread and cheese for breakfast, and told a police officer who found him in the house that he had come for a "walk and a drink." The Queen's Bench Division held he was a *bonâ fide* traveller, and not the less a traveller because he walked beyond the place of his employment (*f*) to get beer at the inn (*Cowap* v. *Atherton*, [1893] 1 Q. B. 49; 68 L. T. 88; 56 J. P. 725).

As to the precautions which landlords must take to satisfy themselves as to the *bonâ fides* of their guest the matter remains still in doubt.

No distinct rule can be laid down. Justices must judge from all the circumstances whether an innkeeper took all reasonable caution to ascertain whether the purchaser was a *bonâ fide* traveller.

It could scarcely be maintained in doubtful cases that merely asking the question was sufficient.

As to the *onus probandi*, see Stone's Justices' Manual, 37th ed., p. 516, from which the following is an extract:

"The *burden* of proof as to the person not being a traveller was, under Licensing Act, 1872, s. 51 (4), upon the *defendant*. The sub-section is, however, repealed by Summary Jurisdiction Act, 1884, Sched. Unless this proof is still thrown upon the defendant by implication (see Licensing Act, 1874, s. 10) it will be incumbent on the prosecutor to prove the persons are not travellers."

Occasional and Other Licences.

Occasional licences authorising the sale of liquor *at other places than licensed premises*, are granted by the Excise on production of

(*f*) But a neighbour walking about the town for his own recreation and amusement is not a traveller (*R.* v. *Rymer* (1877), 41 J. P. 199; 46 L. J. 110).

magistrate's certificate. The provisions relating to grant will be found in Revenue Acts, 1861 (s. 13); 1863 (ss. 19—21); and 1864 (s. 5): ss. 18—20 of the Act of 1874: and the Licensing Act, 1902 (s. 17); and Licensing Act, 1872, s. 29, as to occasional "exemption" licence.

The provision as to grant of occasional licences contained in s. 17 of the Licensing Act, 1902, is the last enactment on the subject, and is to the effect that "An occasional licence shall not be granted, except with the consent of a petty sessional court, and unless, twenty-four hours at least before applying for that consent, the applicant has served on the superintendent of police for the district notice of his intention to apply. . . . ."

Provided that where no "petty sessional court" is available "within three days before the time when the licence is required," the consent may be given by any two justices acting for the division and sitting together. Notice of "consent" is to be sent to the superintendent of police.

This enactment introduces considerable alteration (*g*) in the application for a grant of occasional licence. Formerly, there was a considerable difference of opinion as to the operation of s. 20 of the Revenue Act, 1863, whether the consent then required should be granted in open court or not. This is now set at rest. The "consent" must be that of a petty sessional court or of two justices sitting together.

"Occasional licence" means a licence to sell beer, spirits, or wine granted in pursuance of the Revenue Acts (1862—1864), and the Acts amending the same (Licensing Act, 1874, s. 32).

An occasional licence can be granted to licensed victuallers, refreshment-house keepers with wine licence, and beerhouse keepers licensed to sell for consumption on the premises.

The licence authorises the licensee to sell at some place other than his licensed premises any liquor which he is authorised to sell on those premises; he may only sell during such hours as "the consent" specifies, and this must be between sunrise and 10 P.M., except in the case of a public dinner (*h*) or ball (Revenue Act, 1863, s. 20, and Licensing Act, 1874, s. 19). Licences must be produced to police on demand.

Occasional licences are generally required for cricket matches dinners, county balls, and other local gatherings.

(*g*) Nothing in section shall affect the provisions of s. 29 of the Licensing Act, 1872, which empower the local authority *to extend the hours of closing* on "special occasions."

(*h*) An opinion is given at 55 J. P. 443, that a club dinner is not a public dinner.

Fairs and races.—Occasional licences are required for the sale of liquors at fairs and races (Licensing Act, 1874, s. 18) (*i*). "Any person selling or exposing for sale any intoxicating liquor in any booth, tent, or place within the limits of holding any lawful and accustomed fair or any races without an occasional licence authorising such sale . . . ." shall be liable to penalties.

Occasional (exemption) licence.—Under s. 29 of the Licensing Act, 1872, the local authority (*k*) may make an order exempting a duly licensed person on any special occasion or occasions (*l*) from provisions of Act as to "closing hours." The licence can only be granted to houses licensed for indoor consumption. The provisions of this section are not affected by s. 17 of Licensing Act, 1902. See s. 17 (3) of that Act. This licence is distinguishable from the occasional (*Excise*) licence, which enables a licensed person to sell at a place (mentioned in the licence) *elsewhere* than at his licensed premises.

Refreshment houses.—As to exemption in case of refreshment-house keepers, see 27 & 28 Vict. c. 64, s. 7.

Exemption order.—Under s. 26 of Act of 1872 a local authority (*k*) may exempt licensed premises from closing provisions where it appears desirable to keep same open for accommodation of persons attending markets, etc., in neighbourhood (*m*). Notice of order has to be affixed to premises.

The section (26) contemplates the granting of a permanent exemption order intended to last for an indefinite period, whereas the exemption under s. 29 is intended for a "special occasion."

Houses licensed for consumption "off" the premises are not entitled to the exemption order.

Refreshment houses.—As to grant of order to refreshment-house keepers, see 28 & 29 Vict. c. 77, s. 2.

Regarding "early closing licences," "six-day licences," "additional licences," etc., see ss. 7 and 31 of Licensing Act of 1874, and s. 49, Act of 1872.

(*i*) This section abolishes an exemption long enjoyed under a series of statutes by keepers of licensed houses at fairs and races to sell liquors in booths. See *Hayward* v. *Holland* (1873), 37 J. P. 376.

(*k*) Outside London and metropolitan district — "two justices of the peace sitting in petty session."

(*l*) It is for the justices to determine what is a "special occasion" in their own locality (*Devine* v. *Keeling* (1886), 34 W. R. 718; 46 J. P. 776; 50 J. P. 551).

(*m*) The exemption in favour of theatres (referred to in s. 26) is repealed. See s. 4 Licensing Act, 1874.

Six-day licences.—The holder of such licence is required to keep his premises closed during Sundays, and the notice affixed to premises shall indicate that the licence is for six days only.

Removals.—Section 50 of Act of 1872 provides for the "removal" of licences from one district to another.

Appeal.—Sections 52 and 53 relate to appeals, and provide for temporary continuance of licence pending appeal.

REPEATED CONVICTIONS.

Sections 30, 33, and 34 (Act of 1872), as to forfeiture and endorsement of licences in case of repeated convictions, are repealed by Licensing Act, 1902, s. 33.

Section 31 is also repealed except as to disqualification of premises under certain circumstances.

Evidence of a conviction is not receivable after five years from date of same (s. 32).

ENTRY ON PREMISES.

Section 35 (Act of 1872), empowering police to enter on premises, is repealed by s. 33 of Licensing Act, 1874, but is re-enacted by s. 16 of that Act.

As to issue of search warrant, see s. 17, Act of 1874.

REGISTERS.

Section 36 (Act of 1872) provides that a register of licences shall be kept in every licensing district by the clerk of the licensing justices of the district. Particulars of all licences granted in the district shall be entered in this register, and all "records of conviction." The register is open to inspection of police and officers of Inland Revenue, and to ratepayers and licensees, on payment of fee of one shilling.

A list or register of licences under the Refreshment Houses Act, 1860, has also to be kept. See s. 16 of that Act.

A register of clubs is directed to be kept by the clerk to justices of every petty sessional division (Licensing Act, 1902, s. 25).

Sections 37—44 (Act of 1872)—amendment of law, grants of licences, etc.—are dealt with under headings "NEW LICENCES," "RENEWALS," "TRANSFERS." See pp. 312, 313, 316, *ante*.

Section 45.—As to qualification of premises ("annual value," etc.) for licences.

Section 49.—As to "six-day licences," see under heading "OCCASIONAL AND OTHER LICENCES," p. 329, *ante*.

As to "removal" of licence, "appeals," and continuance of licences during "pendency of appeal," see Act of 1872, ss. 50, 52, 53.

Section 56.—As to protection of owners in cases of offences committed by tenants.

Miscellaneous (Act of 1872).

Sections 60—71 relate to miscellaneous matters—disqualification (*u*) of justices (s. 60)—evidence of sales (s. 62)—moiety of penalties payable to police (s. 66)—transmission of notices by post—retail licences by wholesale dealers—licences for liqueurs, etc.

Evidence of sale.—Section 62, as to "evidence of sale," is important to police (*o*). In proving the sale or consumption of intoxicating liquor "it shall not be necessary to show that any money actually passed" or that any liquor was "actually consumed" if the court be satisfied that a transaction of the nature complained of actually took place.

Section 72 of Act contains a number of "saving clauses" dealing with rights and privileges of the universities, corporations, etc.; the sale of intoxicating liquor in theatres, in packet boats, and in canteens (*p*); sale of methylated spirits, wholesale dealers, etc.

Section 75 of Act relates to billiard licences. See title "Billiards," *ante*.

Sharp *v.* Wakefield, [1891] A. C. 173; 55 J. P. 197: 60 L. J. 73.

The decision of the House of Lords in the case of *Sharp* v. *Wakefield*, March 20th, 1891, gave rise to an impression that an alteration in the licensing law had been effected. This, however, was not so. The judges dealt with the case under existing Acts and affirmed the decision of the Court of Appeal.

Lord Herschell, in his judgment, thus epitomized the case as presented to the House:

"The sole question for decision in this case is—Whether, where a licence is applied for by way of renewal by one who already holds a licence for the sale of intoxicating liquors, the licensing authorities are entitled to take into consideration the wants of the neighbourhood, and the remoteness of

(*u*) Justices interested in liquor traffic are "disqualified" from acting in certain cases. See Licensing Act, 1872, s. 60.

(*o*) The sections, with reference to which this enactment will be most used, are ss. 3, 5—8, 13, and s. 9 of Act of 1874. If a pure gift is established it will not be within this or the other sections (*Petherick* v. *Sargent* (1862), 26 J. P. 135; 6 L. T. 48).

(*p*) As to canteens, see Licensing Act, 1902, s. 23, and p. 321, *ante*.

the premises from police supervision, or whether their inquiry must be limited to the character and conduct of the applicant, and they can only refuse the applicant on the ground of his personal unfitness."

The judgments delivered in the House of Lords supported the judgment in the Court of Appeal, which held that the provisions of s. 42 of the Act of 1872, as amended by s. 26 of the Act of 1874, are mere conditions precedent to the exercise of jurisdiction, and do not in any way limit the absolute judicial discretion of the justices, but modify the procedure only, and the justices were entitled to refuse the renewal of the licence applied for, although no misconduct on the part of the applicant was proved.

This decision established beyond dispute that justices are entitled to consider, when renewing licences, *the wants of the neighbourhood, as apart from the personal conduct of the applicant for the renewal;* and justices have the same absolute judicial discretion to renew or refuse to renew the licence of a fully licensed house, as they have of granting or refusing an application for a new licence.

The Queen's Bench Division has, however, held that giving justices absolute discretion did not mean absolute discretion to do just what they pleased, but a judicial discretion (*q*) which could be maintained in a court of law to have been exercised upon legal grounds after legal hearing and investigation (*R.* v. *Howard* (1889), 23 Q. B. D. 502; 53 J. P. 454; *Jones* v. *Goodman*, Times, January 26th, 1889).

The case of *Boulter* v. *Kent JJ.*, [1897] A. C. 556; 61 J. P. 532, bears upon licensing matters. The appellant was held not to be a party under s. 31 of Summary Jurisdiction Act, 1879, the Act being inapplicable to decisions of licensing meetings.

INTOXICATING LIQUORS (SALE TO CHILDREN) ACT, 1901.

(1 EDW. 7, c. 27.)

An Act to prevent the Sale of Intoxicating Liquors to Children.

S. 1 repeals Intoxicating Liquors (Sale to Children) Act, 1886.

S. 2.—Sale of liquors to children (under fourteen) to be illegal, except such liquors be delivered in corked and sealed vessels in quantities not less than one reputed pint for consumption off the premises only. Penalty, 40*s.*; subsequent offence, £5: and every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold for the purpose of obtaining any description of intoxicating liquor, excepting as aforesaid, shall be liable to like penalties.

(*q*) The discretion must be exercised judicially, that is to say, "according to the rules of reason and justice and not to private opinion," and it must not be "arbitrary, vague, and fanciful, but legal and regular."

S. 3.—Messengers of licensees are exempted from provisions of Act.
S. 4.—Provisions for legal proceedings under Act.
S. 5 defines terms "corked" and "sealed."

The term "corked" means closed with a plug or stopper, whether it is made of cork or wood, or glass, or some other material.

The expression "sealed" means secured with any substance without the destruction of which the cork, plug, or stopper, cannot be withdrawn.

LICENSING ACTS, 1902, 1904.

The Licensing Act, 1902, considerably enlarges the powers of police regarding drunkenness (Part I. of Act), amends the law as to licensing, and provides for the registration of clubs. An abstract of its provisions are here given.

For provisions of the Licensing Act, 1904, see JUSTICES, Section V., *ante*, p. 53.

LICENSING ACT, 1902.

(2 EDW. 7, c. 28.)

An Act to amend the Law relating to the Sale of Intoxicating Liquors and to Drunkenness, and to provide for the Registration of Clubs.

PART I.—AMENDMENT OF LAW AS TO DRUNKENNESS.

S. 1.—If a person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, and appears to be incapable of taking care of himself, he may be apprehended and dealt with according to law.

S. 2.—(1) Any person found drunk whilst in charge of a child apparently under age (*r*) of seven years, may be apprehended. Penalty, 40*s.*, or imprisonment one month.

The offence to be included in list of offences mentioned in the First Schedule to Inebriates Act, 1898, and in s. 60 of Licensing Act, 1872.

S. 3. Power to require person convicted of drunkenness to give security for good behaviour.

S. 4.—Where a licensed person is charged with permitting drunkenness on his premises, and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises.

S. 5. -(1) Where the husband of a married woman is a "habitual (*s*) drunkard," the married woman may apply for an order under the S. J. (Married Women) Act, 1895.

(2) Where the wife of a married man is a "habitual (*s*) drunkard," the married man shall be entitled to apply for an order under this sub-section.

(*r*) If the child "appears to the court" to be under the age of seven, it shall be deemed to be so unless the contrary is proved.

(*s*) See title "INEBRIATES ACTS," *ante*.

The court may make orders containing all or any of the following particulars :

(a) That the applicant be no longer bound to cohabit with his wife :

(b) As to the legal custody of children ;

(c) That the applicant shall pay to his wife such weekly sum (not exceeding £2) as the court consider reasonable ;

(d) As to the payment of costs.

Provided that instead of making an order in pursuance of paragraph (a) of this sub-section the court may, with the consent of the wife, order her to be committed to and detained in any retreat licensed under the Inebriates Acts, 1879 to 1900, the licensee of which is willing to receive her ; and the court may order an officer to remove her to the retreat accordingly.

S. 6.—Where upon the conviction of an offender the court is satisfied that an order of detention could be made under the Inebriates Act (*t*), 1898, ss. 1, 2, then, whether an order of detention is made or not, the court shall order that notice of the conviction, with prescribed particulars, be sent to the police authority for the police area in which the court is situate.

The convicted person is to be informed that the notice is so sent.

"**Black-listing.**"—If the convicted person within three years after the date of the conviction purchases, or attempts to obtain, any intoxicating liquor at any premises licensed for sale of liquor by retail or at any "registered" club, he shall be liable to a fine, for the first offence, of 20*s*., and for any subsequent offence, 40*s*. ; and any licensee (or any person selling or distributing liquor at a registered club) who knowingly supplies such person with any intoxicating liquor, shall be liable to a fine of £10, and for subsequent offence in respect of same person, £20.

The police authority is required to make regulations for the purpose of giving information to licensed persons and secretaries of clubs of orders made, and for assisting in the identification of the convicted persons.

S. 7.—Any person who, on licensed premises, shall procure, or attempt to procure, any intoxicating liquor for any drunken person, or who shall aid and abet such person in procuring same, shall be liable to a fine of 40*s*., or imprisonment for one month.

S. 8.—**Public place.**—For the purposes of s. 12, Licensing Act, 1872, and ss. 1, 2, of this Act, the expression "public place" shall include "any place to which the public have access, whether on payment or otherwise."

PART II.—AMENDMENT OF LICENSING LAW.

S. 9.—(1) It shall be the duty of the clerk of the licensing justices to enter notice of convictions of licensed persons in the register of licences kept by him.

(2) On any application for the grant, renewal, or transfer of a licence, the licensing justices shall have regard to any entries in the register of licences relating either to the person by whom, or to the premises in respect of which, the licence is to be held.

(*t*) Section 2 authorises the detention of a habitual drunkard four times convicted of drunkenness within twelve months. See "INEBRIATES ACTS," *ante*.

Notice of the conviction must be served on the owner of the premises (Licensing Act, 1872).

After the commencement of this Act, no conviction shall be recorded on a licence, [*but every conviction of a licensed person as such must be entered on the register of licences*].

S. 10.—(1) Notwithstanding anything contained in s. 73 of Licensing Act, 1872, a justices' license shall be required in the case of every Excise licence under which intoxicating liquor may be sold by retail to be consumed off the premises.

Provided that this sub-section shall not apply to any Excise licence taken out by a spirit dealer or wine dealer for premises which are exclusively used for the sale of intoxicating liquors, or of intoxicating liquors and mineral waters, or other non-intoxicating drinks, and which have no internal communication with the premises of any person who is carrying on any other trade or business.

(2) Notwithstanding anything contained in s. 8 of the Wine and Beerhouse Act, 1869, and in ss. 69 and 74 of the Licensing Act, 1872, licensing justices shall have a free and unqualified discretion (except as hereinafter provided) either to refuse or grant "off" licences for the sale of beer, wine, spirits, liqueurs, sweets, or cider.

(3) Applications for renewal of such licences to be subject to the provisions of the Licensing Acts relating to the renewal of licences.

(4) Provided that where an "off" licence for the sale of wine, spirits, liqueurs, sweets, or cider, was in force on June 25th, 1902, an application for the "renewal" of such licence shall not be refused to the person who held such licence on June 25th, 1902, except on one or more of the grounds on which it might have been refused if this Act had not passed, or on the ground that the licensee has sold surreptitiously, or has been guilty of misrepresentation as to the nature of goods sold, or has in any other way been guilty of misconduct in the management of his business.

S. 11. (1) An applicant for a new "on" licence is required (twenty-one days before meeting) to deposit with the clerk to the licensing justices a plan of the premises in respect of which the application is made.

(2) Any alteration in any on-licensed premises which gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or which affects the communication, internal or external, on premises, shall not be made without the consent of the licensing justices, and the justices may, before giving their consent, require plans of the proposed alterations to be deposited with their clerk at such time as they may determine. For contravention of section the licence may be forfeited.

(3) Where a licence is forfeited, the owner of the premises shall have all the rights conferred on owners by s. 15 of the Licensing Act, 1874 (*u*).

(4) On any application for the renewal of an "on" licence, the licensing justices may require a plan of the premises to be produced, and may, (subject to appeal to quarter sessions), direct such alterations as they think reasonably necessary to be made in the premises. If any such order is made and complied with, no further requisition for structural alteration of premises shall be made within the next five years.

(*u*) That is, to obtain a temporary authority and transfer.

S. 12.—**Disqualifications.** — A justice shall not be disqualified to act for any purpose under the Licensing Acts, 1828 to 1886, or this Act, by reason only of his being interested in a railway company which is a retailer of intoxicating liquor.

S. 13.—No solicitor or other person being a clerk of licensing justices, shall act as solicitor or agent for any person in any application for or in respect of a licence or any other proceedings under the Licensing Acts in his own district, except so far as relates to the preparation of notices or forms. Penalty, £100.

S. 14.—**Date of annual licensing meeting.** — (1) The general annual licensing meeting in every licensing district shall be held within the first fourteen days of the month of February in each year, and every adjournment thereof shall be held within one month of the date of the general annual licensing meeting.

The several sub-sections (seven) of section deal with matters of a temporary character, which came into operation on the passing of the Act; continuance of licences, etc.

S. 15.—Restriction on protection orders, notice to police, etc.

S. 16.—Provisions as to transfer, attendance of parties, etc. See heading "TRANSFERS," p. 316, *ante*.

The provisions of sub-s. (2) of s. 40, Licensing Act, 1872, as to "notices of intention to transfer," shall apply to all cases of applications under ss. 4 and 14 of the Alehouse Act, 1828.

The provisions of s. 4 of the Wine and Beerhouse Act, 1870, with respect to "adjournment" of application for transfer, shall apply to all licences in cases arising under ss. 4 and 14 of the Alehouse Act, 1828; and where any such application is adjourned, and there is in force an authority to sell (under Licensing Act, 1842), such authority shall continue in force till the hearing of the adjourned application.

S. 17.—**Occasional licences.**—An occasional licence shall not be granted except with the consent of a petty sessional court, and unless due notice (twenty-four hours) of intention to apply has been given to the superintendent of police for district. The section provides where there is no sitting of a petty sessional court within three days of the time when the licence is required, the consent may be given by any two justices acting for the division and sitting together; notice of same to be sent to the superintendent of police.

The "consent" required by this section shall be substituted for the consent mentioned in s. 13 of Revenue Act, 1862; s. 20 of Revenue Act, 1863; s. 5 of Revenue Act, 1864; and s. 19 of Licensing Act, 1874; but nothing in this section shall affect the provisions of s. 29 of Licensing Act, 1872, empowering the local authority to extend the hours of closing on "special occasions." See also heading "Occasional and other Licences," pp. 327, 329, *ante*.

Under s. 18 an "additional" notice of application for new licence has now to be given to the clerk of the licensing justices twenty-one days at least before date of meeting.

S. 19.—**Confirmation of licences.**—Licences cannot be "confirmed" until twenty-one days after grant of same.

"Off" licences require confirmation in like manner as other licences.

S. 20.—*Costs.*—Costs of justice whose decision is appealed against may be paid out of the county or borough funds.

S. 21.—From and after March 31st, 1907, sessions are not to be held in licensed premises, nor shall any coroner's inquest be held on such premises where other suitable premises have been provided.

S. 22.—Restaurant keepers are not to be disqualified for receiving a licence by reason only of the premises not being a dwelling-house, or of applicant not being the real resident holder and occupier thereof.

S. 23.—It shall not be necessary for persons holding naval and military canteens to obtain a justices' licence in order to hold an Excise licence.

PART III.—REGISTRATION OF CLUBS.

S. 24.—(1) The secretary of every club which occupies a house or part of a house or other premises which are habitually used for the purposes of a club, and in which any intoxicating liquor is supplied to members or their guests, shall cause the club to be registered in manner provided by this Act.

(2) The registration of a club under this Act shall not constitute the club premises licensed premises, or authorise any sale of intoxicating liquor therein which would otherwise be illegal.

S. 25.—The clerk to the justices in each petty sessional division shall keep a register of all such clubs within the division in form prescribed by the Secretary of State, which shall contain (*inter alia*)—

The name, objects and address of club;

The number of members; and

The rules of the club relating to their admission.

The secretary of every such club shall, in the month of January of each year, furnish to the clerk to the justices a return, giving the required particulars, with a record of the latest payment of subscriptions. As to penalty for non-return or false return, see s. 30, *post*.

S. 26.—As to penalty for supplying or keeping liquor in unregistered club.

S. 27.—Intoxicating liquor shall not be supplied in a club for consumption off the premises, except to a member on the premises.

S. 28.—A court of summary jurisdiction on complaint in writing may make an order directing a registered club to be struck off the register on certain grounds enumerated in section (*inter alia*):

That the number of members is less than twenty-five;

That there is frequent drunkenness on the premises;

That persons are admitted as members with less than forty-eight hours' interval between nomination and admission;

That the supply of intoxicating liquor to the club is not under the control of the members or their committee.

S. 29.—*Search warrant.*—A justice may on "reasonable grounds" grant a search warrant authorising a constable to enter a club, and inspect the premises, to take the names and addresses of any persons found therein, and to seize any books and papers relating to the business of the club.

S. 30.—As to penalty for false returns, etc., £50, with liability to imprisonment.

S. 31.—Application of Act to London.

S. 32.—Definitions, etc.

PART IV.—SUPPLEMENTAL PROVISIONS.

Ss. 33, 34.—Repeal, citation, etc.

SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND.

Alehouse Act, 1828, certain words in ss. 1, 3, 13, 14. As to dates of holding of licensing sessions, formerly held in August and September but now to be held in February of each year, see s. 14 of Act of 1903.

Licensing Act, 1872, ss. 30, 33, 34, 55, 57, paragraphs (1) and (2) of s. 31, and certain words in ss. 48 and 58. As to endorsement of convictions on licence, see s. 9 of Act of 1903.

Licensing Act, 1874, ss. 13, 24, and s. 14 from words "and may be directed."

The Beer Dealers Retail Licences Act, 1880, and the Beer Dealers Retail Licences (Amendment) Act, 1882.

Section 174 of the Army Act (44 & 45 Vict. c. 58).

LOCAL GOVERNMENT ACT, 1888.

The Local Government Act (51 & 52 Vict. c. 41) divides England and Wales into 122 areas of local government, consisting of an equal number of "administrative counties" and "county boroughs." See Sched. III. of Act.

The Act provides for the appointment of county councils, and contains important provisions affecting the administration of the police. Subject to a special proviso *re* the powers and duties of justices as conservators of the peace, all the powers and duties of quarter sessions, or of justices out of session with respect to county police, are transferred to the standing joint committee, which is to be appointed in each county, and is to consist of an equal number of members taken from the quarter sessions and from the county council.

Before the passing of this Act the quarter sessions appointed the chief constable, and he appointed the police for the county, but for police purposes, "county" meant a county, riding, or division having a separate court of quarter sessions.

In a municipal borough the police were under the control of the watch committee of the borough council, though a borough might consolidate its police with the county force, and where the population of the borough was less than 5,000 the consolidation was in effect compulsory.

Under this Act the police force in all boroughs, with a population of less than 10,000 is merged in that of the county, and will be under the control of the standing joint committee for the county.

The principal powers and duties which are transferred to the county council from the quarter sessions or the justices out of session are as follows :

The powers of quarter sessions in making any county police or other rate, and of borrowing money, and of passing the accounts of the county treasurer ; the maintenance of shire halls, county buildings, police stations, etc., the maintenance of or contribution to pauper lunatic asylums, and reformatory and industrial schools ; the maintenance of county bridges and roads repairable therewith, and the powers of the county authority under the Highways and Locomotives (Amendment) Act, 1878 ; the appointment and determination of the salaries of, or the fees to be paid to, public analysts, inspectors, and other county officers ; the powers of the local authority under the Contagious Diseases (Animals) Acts, the Destructive Insects Act, the Factory Acts, the Wild Birds Protection Act, the Weights and Measures Act, and under the Riot (Damages) Act, 1886 ; the powers of justices out of sessions in respect of the licensing of places for public performance of stage plays, and their powers as local authority under the Explosives Act, 1875.

Therefore, it will be noticed that there was merely a transfer of existing powers, and no creation of new powers. Important changes have, however, been made with respect to the maintenance of main roads, in the appointment of coroners and of medical officers of health (Extract : Ryde and Thomas on Local Government).

County Council.

The council of a county is to consist of a chairman, aldermen, and councillors (*x*). The council and the members shall be constituted, elected, and conduct their proceedings in like manner, and be in the like position in all respects as the council of a borough divided into wards, subject to special provisions of the Act (s. 2).

S. 9 of the Act enacts the powers, duties and liabilities of quarter sessions, and of justices out of session, with respect to the county police, which shall on and after the appointed day vest in and attach to the quarter sessions, and the county council jointly, and be exercised and discharged through the standing joint committee (*y*) of the quarter session and county council appointed as hereinafter mentioned.

Provided that the powers conferred by s. 7 of the County and Borough Police Act, 1856, which requires constables to perform, in addition to their ordinary duties, such duties connected with the police as the quarter sessions may direct or require, shall continue to be exercised by the quarter sessions, as well as by the said standing joint committee, and may also be exercised by the county council, and the said section shall be construed as

(*x*) As to "Parish" Councillors, see title, *post*.
(*y*) Standing joint committees are not appointed in county boroughs.

if the county council and the standing joint committee were therein mentioned, as well as the quarter sessions.

Nothing in this Act shall affect the powers, duties, and liabilities of justices of the peace as conservators of the peace, or the obligations of the chief constable, or the constables to obey their lawful orders given in that behalf.

STANDING JOINT COMMITTEE.

S. 30 enacts: For purposes of the police (*a*), clerk of the peace, clerks to justices and joint officers, and other matters required to be determined jointly by the quarter session and the council of a county, there shall be a standing joint committee of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions, and of members of the county council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of arrangement, such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

The joint committee shall elect a chairman, and in case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot.

Any matter arising under this Act with respect to the police, or to the clerk of the peace, or clerks to justices, or to officers who serve both the quarter sessions or justices and the county council, or to the provision of accommodation for the quarter sessions, or justices out of sessions or to the use by them or the police or the said clerks of any buildings, rooms, or premises, or to the application of the Local Stamp Act, 1869, any sums received by clerks to justices or with respect to anything incidental to the above mentioned matters, and any other matter requiring to be determined jointly by the quarter sessions and county council, shall be referred to and determined by the joint committee under this section, and all such expenditure as the said joint committee determine to be required for the purposes of the matters above mentioned in this section shall be paid out of the county fund, and the council of the county shall provide for such payment accordingly (*b*).

LOCOMOTIVES ON HIGHWAYS.

Various statutes have been passed during recent years for the purpose of regulating and controlling the use of locomotives (*c*) on

(*a*) Under 2 & 3 Vict. c. 93, s. 17, the chief constable is required to attend every quarter sessions of the justices of the county, and to make quarterly reports to the justices of all matters which they shall require. Reports are now made to the standing joint committee and to the quarter sessions.

(*b*) A moiety of cost of police (pay and clothing) is annually defrayable by Government subject to certificate of efficiency.

(*c*) The expression "locomotive" is defined as a locomotive propelled by steam or other than animal power.

highways. These statutes may be divided into two classes—those dealing with ordinary or *heavy* locomotives (*d*), and those dealing with *light* locomotives or motor cars. Supplementing these are the orders and regulations of the Local Government Board and the different local authorities.

Heavy Locomotives.

The Locomotive Act, 1861 (24 & 25 Vict. c. 70), amended by Acts of 1865, 1878, and 1898, apply to heavy locomotives (*d*). Such locomotives can only be used on highways subject to certain restrictions regarding consumption of smoke, speed, weight, etc.

Rules for working.—Three persons (*e*) at least must be in charge of the locomotive, one to precede locomotive on foot to render assistance, in case of necessity, to persons in charge of horses and carriages drawn by horses. The whistle is not to be sounded nor steam blown off while on the road.

Locomotives can be stopped by any person in charge of a horse or carriage, and at night (one hour after sunset and one hour before sunrise), must carry two conspicuous lights, one on each side of the front of the locomotive (28 & 29 Vict. c. 83, s. 3).

Speed.—Subject to regulation of the local authority under byelaws, the speed of a locomotive must not be more than four miles an hour along a turnpike road or highway or more than two miles an hour through any town or village (28 & 29 Vict. c. 83, s. 4). Penalty for contravention, £10.

Smoke.—Any person using any locomotive on any turnpike road or highway not constructed on the principle of consuming its own smoke, or not consuming, so far as practicable, its own smoke, is subject to a penalty not exceeding £5 for every day during which locomotive is so used (41 & 42 Vict. c. 77, s. 30).

Weight.—For restrictions as to weight and width, construction of wheels (*f*), etc., see 41 & 42 Vict. c. 77, s. 28 ; and Locomotive Act, 1861, s. 4, as to weight to be carried.

(*d*) Distinguishable from "heavy" motor cars, regarding which regulations were issued by the Local Government Board, December 28th, 1904. See p. 347, *post*.

(*e*) If more than two waggons be attached, an additional person shall be employed.

(*f*) Drag wheels are to be soled or shod with diagonal cross bars.

Waggons.—Not more than three loaded waggons shall be drawn without consent of county or borough council.

Byelaws.—Byelaws (*g*) may be made prohibiting or restricting the use of locomotives on any specified highway and for regulating their use generally, and prohibiting or restricting the use of locomotives on any specified bridge. Penalty for contravention of byelaw, £5 (Locomotive Act, 1898, s. 6).

County authorities may also make byelaws for licensing (*h*) locomotives to be used within the county, and fix fee (not exceeding £10) to be paid for licence (Act of 1898, s. 10), but the section is not to apply to any locomotives used solely for agricultural (*i*) purposes, which have to be registered (fee, 2*s*. 6*d*.).

Light Locomotives.

The use of light locomotives or motor cars is regulated by the Locomotives on Highways Act, 1896 (the principal Act), and the Motor Car Act, 1903 (*k*). The two Acts may be cited together as the Motor Car Acts, 1896 and 1903.

The principal Act declared a "light locomotive" to be a carriage for all purposes, removed restrictions imposed by former Locomotive Acts, and imposed regulations as to weight, lights, speed, etc., which are now supplemented by regulations of the Local Government Board made under subsequent Acts.

The amending Act (1903) sets up a system of "registration" for motor cars, requiring drivers to be *licensed*, repeals the hitherto existing regulation as to maximum speed, and aims at the prevention of excessive speed and reckless or negligent driving.

By the Act of 1896 (59 & 60 Vict. c. 36), certain enactments (see Schedule to Act) restricting the use of locomotives shall not

(*g*) Byelaws are made in the "public interest." Any person (a constable) can prosecute for breach of same (*Badcock* v. *Sankey* (1890), 54 J. P. 564).

Persons using traction engine and trucks on a highway may be indicted for a nuisance if they create a substantial obstruction (*R.* v. *Chittenden* (1885), 49 J. P. 503).

(*h*) Tramways may use the engines unlicensed. As to byelaws in quarter sessions boroughs, see Local Government Act, 1888, s. 35.

(*i*) "Agricultural purposes," user. See *Ellis* v. *Hulse* (1889), 23 Q. B. D. 24; 53 J. P. 598, as to letting engine for drawing trucks of manure: also *Murch* v. *Baker*, as to drawing machine from farm to farm (55 J. P. 583).

(*k*) The Act is to continue in force for three years.

apply to any vehicle propelled by mechanical power if it is under three tons in weight unladen, and is not used for the purpose of drawing more than one vehicle (maximum weight with locomotive four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause; vehicles so exempted are referred to as light locomotives.

A proviso authorises the making of byelaws restricting the use of locomotives upon bridges: a light locomotive shall be deemed to be "a carriage."

In calculating the weight of a vehicle unladen, the weight of any water, fuel, or accumulators, used for the purpose of propulsion, shall not be included.

Ss. 2, 3.—As to carrying lamp and bell to notify approach of vehicle.

S. 4.—*Speed.*—As to "speed limit," see now s. 9 of Motor Car Act, 1903, which repeals this section.

S. 5.—As to keeping and use of petroleum used for light locomotives; but see now Motor Car Act, 1903.

S. 6.—(1) The Local Government Board may make regulations with respect to the use of light locomotives.

(2) Regulations may be of a local nature and limited to a particular area, and may, on application of local authority, prohibit or restrict the use of locomotives for purposes of traction in crowded streets.

S. 7.—Breach of byelaw punishable by fine of £10.

S. 8.—As to Excise duties (additional) payable for light locomotives if weight exceeds one ton, £2 2*s.*; if weight exceeds two tons, £3 3*s.*

S. 9.—As to variation of orders by Local Government Board.

S. 10.—Applicable to Scotland.

Regulations of Local Government Board.

The regulations made under the Locomotives on Highways Act, 1896, were contained in six Articles dated November 9th, 1896, dealing with weight, brakes, light, speed, working, and conduct of drivers, but such regulations are supplemented and to a great extent superseded by regulations made under the Acts of 1903 and 1904.

MOTOR CAR ACT, 1903.

(3 Edw. 7, c. 36.)

The Motor Car Act, 1903, is supplementary to the Locomotives on Highways Act, 1896, only *one section* of which (s. 4 *re* "speed limit") is repealed.

Reckless driving.—Quite apart from the "speed limit" now authorised (twenty miles per hour) reckless or negligent driving to the danger of the public, "having regard to all the circumstances of the case," is illegal (s. 1).

Arrest.—Any police constable may apprehend without warrant the driver of any car if he refuses to give his name and address or produce licence, or if car does not bear mark of identification.

To refuse to give name or address, or to give false name or address, is an offence under the Act, and it is the duty of the owner of any car (*l*), if required, to supply any information within his power which may lead to identification of driver (s. 1 (2), (3)).

Registration.—Every motor car shall be registered (fee, £1; motor cycle, 5*s*.) with the council of a county or a county borough (a borough of over 50,000 inhabitants), and a number or mark affixed in accordance with regulations of the Local Government Board. A car must not be used on highway without being so registered or without distinguishing marks being properly affixed and distinguishable.

A proviso (a) allows an unregistered car to be driven for the purpose of being registered, and authorises (b) the issue of "a general identification mark" to manufacturers and dealers using cars for trial (s. 2).

Licences.—Drivers of motor cars must be licensed by the local authority. See s. 2. The licence is an annual one—fee, 5*s*. A licence can be issued to any person—not disqualified (see s. 4)—over seventeen years of age (fourteen for motor cycle). A constable can demand production of licence; penalty for default, £5 (s. 3).

Suspension, etc.—Any person convicted under the Act (except for certain offences *re* "speed limit") may (a) have his licence

(*l*) See Home Office explanatory Circular Letter, p. 349, *post* (*Drivers*).

suspended, may (b) become "disqualified," and (c) particulars of conviction shall be endorsed on licence (s. 4); appeal allowed (sub-s. (4)).

Forgery, etc.—To forge, alter, or fraudulently lend any identification marks or any licence is an offence (s. 5).

Obligation on driver in event of accident.—The driver of a motor car shall, in case of accident occurring to any person's horse or vehicle "owing to the presence of the motor car on the road," stop, and, if required, give name and address of self and owner and number of car. *Penalties*, 1st offence, £10; 2nd offence, £20; 3rd offence, £20, or liability to imprisonment—one month (s. 6).

Regulations of Local Government Board.—The Local Government Board are empowered under the "principal Act" (Locomotives and Highways Act, 1896) to make regulations (a) for facilitating the identification of cars, (b) with respect to licences, etc. (s. 7).

Prohibition on special roads.—The Local Government Board may prohibit the driving of cars on any "specified" road—less than 16 feet in width, or on which motor car traffic would be especially dangerous (s. 8).

Speed.—The speed limit is fixed at twenty miles per hour; but the Local Government Board may, within certain areas, reduce same to ten miles per hour. No person is to be convicted under this provision "merely on the opinion of one witness as to the rate of speed." *Penalties*, 1st offence, £10; 2nd offence, £20; subsequent offences, £50 (s. 9).

Notice boards.—Local authorities are required to give public notice of any regulations made by the Local Government Board limiting speed or restricting use of motor cars on any specified highways. The authority is required to erect sign posts, if necessary, denoting dangerous corners or precipitous places (s. 10).

Local authorities.—For purposes of ss. 9 and 10 "local authorities" are defined as (a) the mayor, aldermen, and commons of City of London; (b) the councils of boroughs with over 10,000 inhabitants; and (c) as respects other areas, the county councils. See also s. 2.

Penalties.—Penalty for offences for which no special penalty is provided (*m*): for 1st offence, £20; for 2nd or subsequent

(*m*) This would apply to offences under ss. 1 (*reckless driving*), 2–5, but not to s. 9 (*speed limit*).

offence, £50, or liability to imprisonment not exceeding three months. Appeal is allowed where fine exceeds 20*s.* (s. 11).

Weight of cars.—Section 12.—As to power of Local Government Board to make regulations *re* weight of cars (*n*), and speed of cars of over two tons in weight (s. 12).

Inland Revenue licences.—Section 13.—As to licences (15*s.*) required for motor car drivers employed as "male servants."

Local Government Board inquiries.—Section 14.—As to power of Local Government Board to carry out local inquiries.

"Saving of liability."—Under Highway Act, county and borough byelaws, etc. (s. 15).

Crown servants.—Act to apply to persons in public service (s. 16).

Menai bridge.—Regulations for protection of same (s. 17).

Application of Act to Scotland (s. 18) : to **Ireland** (s. 19).

Interpretation, commencement, title.—The expression "motor car" has the same meaning as the expression "light locomotive" in the "principal Act." The Act is to continue in force for three years from January 1st, 1904, "unless Parliament shall otherwise determine." It may be cited as the Motor Car Act, 1903 (ss. 20, 21).

STATUTORY RULES AND ORDERS.

Various "Statutory Rules and Orders" have been made by the Local Government Board under the powers conferred upon them by the Act. See ss. 2, 7, 11, 12 (Act of 1903).

THE MOTOR CAR (REGISTRATION AND LICENSING) ORDER, 1903.

The Order, dated November 19th, 1903, gives particulars as to registration and licensing, and contains scheduled lists showing the identification marks in use in the various counties and boroughs.

Part I. relates to registration ; Part II. to licensing ; Part III. identification marks and supplemental provisions.

An explanatory "*addendum*" (dated November 20th, 1903) was issued with the Order.

An Order (46,095), dated November 21st, 1903, varies the provisions of former Acts "as to construction of wheels of locomotives on highways."

(*n*) Regulations dated December 28th, 1904, have been issued. See p. 347.

The Motor Cars (Use and Construction) Order, 1904.

An important Order (46,262), dated March 9th, 1904, was issued to local authorities, with explanatory Circular dated March 10th, 1904. The Order deals with the weight, width, and working of motor cars and vehicles drawn by cars (*o*), the manipulation of brakes, the question of lights, etc. "Search lights" are prohibited, and the use of "bright and dazzling lamps" is deprecated. See Circular, March 10th, 1904.

Art. IV., provides that the driver of a motor car "shall on request of any police constable in uniform, or of any person having charge of a horse, or if any such constable or person shall put up his hand as a signal for that purpose cause the motor car to stop and to remain stationary so long as may be reasonably necessary."

Notices and sign posts.—An Appendix to Circular of March 10th, 1904, contains "recommendations" for notices and sign posts (s. 10, Act of 1903) with "symbols" of same.

The boards or posts are to be placed on the near side of the road about fifty yards from the spot to which they apply at not less than eight feet from the ground level.

Petroleum.—Regulations were issued by the Home Office, March 18th, 1903, as to the keeping and use of petroleum ("petroleum spirit") for the purpose of light locomotives.

Heavy Motor Cars.

An important Circular embodying the report of the Departmental Committee (*p*)—appointed under s. 12 of the Motor Car Act, 1903 — was issued by the Local Government Board, December 28th, 1904.

The recommendations of the Committee aim at the development of motor traffic of a heavier character than that at present allowed by law, but subject to the observance of suitable conditions for the protection of the roads and the avoidance of inconvenience to other users of the highway.

Heavy Motor Car Order, 1904.

Article II. defines expressions used in the regulation—"heavy motor car" (cars exceeding two tons in weight), "trailer," "axle weight," "width," "diameter," "weight," etc.

(*o*) A further Order dealing with "heavy motor cars" was issued (December 28th, 1904).

(*p*) The report of the Committee has been published as a Parliamentary Paper (C. 2069, Session 1904).

Weight.—Hitherto the weight of a motor car unladen has been legally limited to three tons. This limit is now raised to five tons (with trailer six and a half tons). See Art. III.

Registration.—The owner, when applying for the registration of a heavy motor car, is to declare weight of car, axle weight, diameter of wheels, which has to be "certified" by registration officer. The car has for this purpose to be brought to the place of registration (Art. III.).

The total weight of car and load is limited to twelve tons, and the weight borne on any axle is not to exceed eight tons—referred to as the "registered axle weight." See Art. V.

Tires.—Special and detailed provision is made by Art. VI. for the purpose of securing a width of tire duly proportionate to the moving load and the size of the wheels in cases where the wheels are fitted with ordinary tires, *i.e.*, tires which are not pneumatic or are not made of a soft or elastic material. No ordinary tire, however, is to be less than five inches in width. The scale of sizes is fully laid down in the Article.

Where pneumatic tires or tires of soft or elastic material are used the width is not prescribed by the regulations.

Wheels, etc.—The regulations contain other minor provisions as to construction and use of cars, diameter of wheels (in the case of any wheel with an ordinary tire the diameter is not to be less than two feet (Art. VIII.)), provision of sufficient and suitable springs (Art. X.), metal on tires (Art. VI.).

Width of cars.—Cars with a weight unladen of three tons or more are allowed a width of 7 ft. 6 in. (Art. IX.).

Speed.—A heavy motor car is restricted to a speed of eight miles per hour, or to five miles if the car exceeds in weight three tons or draws a trailer. Cars fitted with pneumatic tires may be driven at a speed of twelve miles per hour (Art. VII.).

Trailers are treated of in Art. XI. The "axle weight" is limited to four tons, which is to be plainly marked on the "off" side of the trailer. A trailer is not to be drawn by any car used as a stage carriage or for conveyance of passengers for gain or hire. A trailer does not require registration.

Circular Letter.

The following Circular Letter dealing with questions arising upon the administration of the Motor Car Act of 1903 was issued from the Home Office, February 21st, 1905 :

In the letter referred to the Secretary of State draws attention to the regulations which have been already issued by the Local Government Board and deals with points upon which doubts have been expressed and questions raised.

I. A doubt has been expressed as to the construction to be placed upon the phrase "a copy of these particulars" used in section 4 (1) (c) of the Act of 1903, which provides that particulars of the conviction and any order of the court shall be endorsed on the licence of the person so convicted and a copy of these particulars shall be sent to the council by whom the licence has been granted.

The Secretary of State is advised that the phrase "a copy of these particulars" means a full copy of the whole endorsement actually made on the licence.

II. Question has arisen as to the course to be adopted to carry out a decision of the court for the endorsement of a licence under section 4 of the Act where the defendant gives notice of appeal so as to avoid endorsement, or where the defendant fails to produce his licence ; and as to who should prosecute for the latter offence.

The Secretary of State is advised that it is open to justices to refuse to defer endorsement on the ground that the defendant announces an intention to appeal, and that in cases where the defendant fails to produce his licence within a reasonable time for endorsement, there is no objection to the information under section 4 (2) being laid by the person who laid the information for the offence for which the justices convicted.

III. The Secretary of State has been consulted as to whether a conviction of a driver for not carrying a front light when the car is being driven, or is in use, should be endorsed on his licence.

As this offence is an offence in connection with the driving of a motor car, and is not a first or second offence of exceeding the limit of speed fixed under the Motor Car Act, the conviction must, under section 4 (1) (c) of the Act, be endorsed upon the driver's licence.

IV. Another point to which attention has been drawn relates to the obligation imposed upon the owner of the car by section 1 (3) of the Act to give information which will lead to the identification of the driver.

(*Drivers.*) The Secretary of State is of opinion that (1) it is only in the case of a driver committing an offence under section 1 of the Act and refusing to give his name and address or giving a false name or address that it is the duty of the owner, if required, to give any information in his power which may lead to the driver's identification and apprehension. The owner is guilty of an offence under the Act if he refuses to give such information. (2) There are no words in the section to the effect that the car must be stopped when the driver's name or address is demanded, and in order to prove refusal to give name and address, it is only necessary to

show that a request to stop has been made and that the driver must have heard and did not comply therewith. Each case must turn on the question whether the conduct of the driver amounts to a refusal to give his name and address. This in each instance is a question of fact.

By an Order issued April 17th, 1905, a second index mark has been assigned to the County of London.

LOTTERIES.

By the Gaming Act, 1802, no person shall publicly or privately keep any office or place to exercise, keep open, show, or expose to be played, drawn, or thrown at, or in, either by dice, cards, lots, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any game or lottery called a "Little Goe," or any other lottery whatsoever not authorised by Parliament (see *Morris* v. *Blackman* (1864), 28 J. P. 199), or shall knowingly suffer to be exercised any such game or lottery in his or her house, room, or place. Penalty, £500, to be recovered at the suit of his Majesty's Attorney-General (see *R.* v. *Tuddenham* (1841), 10 L. J. 163); but this case does not affect the prosecution of a person as a rogue and vagabond, inasmuch as 5 Geo. 4, c. 83, which repeals 17 Geo. 2, c. 5, provides (in s. 21) for the prosecution of persons liable to be punished as "rogues and vagabonds."

The offence can be dealt with summarily under the Vagrancy Act, 1824, ss. 5, 21. The punishment of a rogue and vagabond is by fine (£25), or imprisonment with hard labour for not exceeding three months.

8 & 9 Vict. c. 109, and 37 Vict. c. 15, prohibit the advertising of lotteries, etc. Persons connected with "art unions" are protected from penalties under 9 & 10 Vict. c. 48, on complying with provisions of statute.

LUNATICS.

The Lunacy Act, 1890 (53 Vict. c. 5), contains 342 sections, and can only be briefly referred to as far as its provisions affect matters of police. The Act is amended by the Lunacy Act, 1891 (54 & 55 Vict. c. 65).

Lunatics are divided into three classes: (1) Private lunatics—including those found so by inquisition and all who are not paupers; (2) pauper lunatics—who are generally maintained at the cost of their parish or county; (3) criminal lunatics—those detained in the custody of the law.

Summary reception orders.—Every constable, relieving officer, and overseer of a parish who has knowledge that any person within the district or parish of the constable, officer, etc., who is not a pauper and is not wandering at large, is deemed to be a lunatic and not under proper care or control, or is cruelly treated or neglected, shall within three days give information thereof upon oath to a justice being a judicial authority under the Act. Such justice is required to authorise an examination by two medical practitioners and to act in same manner as if a petition for a reception order had been presented. The justice, if satisfied, may order the lunatic to be received and detained in an institution for lunatics, and police are required to carry out the conveyance of the lunatic thereto (s. 13, Act of 1890).

Private patients.—Private patients not found lunatic by inquisition are to be received only under orders of "judicial authority" (*i.e.*, a justice specially appointed (*q*)) upon application by petition and two medical certificates on prescribed forms (Act of 1890, s. 4).

Boarders.—Boarders desirous of voluntarily submitting to treatment may be received in licensed houses on the consent of two justices (s. 229, Act of 1890).

Urgency orders.—Where it is expedient for the welfare of a person (not a pauper) alleged to be lunatic (*r*), or for the public safety, that he should be placed under care and treatment, he may be received and detained in an institution, or as a single patient, upon an "urgency order" made in the prescribed form (Act of 1890, s. 11). The order shall remain in force for seven days, or longer, if petition be pending.

Temporary removal of lunatic to workhouse.—In any case where a summary reception order might be made, any justice, if satisfied that it is expedient for the welfare of the lunatic or for the public safety that the lunatic should be placed under care and control, and if proper accommodation (*s*) can be provided in the workhouse of the union in which lunatic is, a justice may make an

(*q*) A justice "specially appointed" (s. 10 of Act) may exercise powers *outside* jurisdiction (Lunacy Act, 1891).

(*r*) "Lunatic" includes idiot and person of unsound mind.

(*s*) The Home Secretary expressed an opinion that a person suffering from delirium tremens, who had been refused admission at a workhouse, might be sent to a lunatic asylum (64 J. P. 330).

order for taking him to and detaining him in such workhouse, such detention not to exceed fourteen days.

Unauthorised detention.—Any person who, except under the provisions of the Lunacy Act, 1890, receives or detains a lunatic in an institution or for payment in an unlicensed house, shall be guilty of a misdemeanor, and in latter case shall be also liable to a penalty of £50 (s. 315 of Act).

Pauper.—Where a pauper alleged to be a lunatic or an alleged lunatic wandering at large is brought before a justice, a medical practitioner is to be called in, and if, on his report, the justice is satisfied that it is desirable that the person examined should be detained, the justice may by order direct his conveyance to and detention in an institution for lunatics in prescribed form (Act of 1890, s. 16).

See s. 18 (Act of 1890) as to when lunatic may be treated as a pauper.

As to medical fees and other expenses, see s. 285 (Act of 1890), and s. 299 as to expenses of maintenance recoverable by guardians.

Criminal Lunatics.

The Criminal Lunatics Act of 1884 (47 & 48 Vict. c. 64) repeals certain statutes relating to criminal lunatics. When a prisoner is certified to be insane, a Secretary of State may direct him to be removed to an asylum. The statutes in force relating to criminal lunatics are the Criminal Lunatics Act, 1800, the Criminal Lunatics Asylum Act, 1860, and the Trial of Lunatics Act, 1883. As to military lunatics, see the Army Act, 1881, s. 91.

Escape and recapture.—A lunatic having escaped from an asylum, etc., can be retaken at any time within fourteen days after his escape: after that time a fresh order and certificate must be obtained before he can be received at the asylum (ss. 85, 89).

Section 11, Criminal Lunatics Act, 1860 (23 & 24 Vict. c. 75), provides for the apprehension at any time of any person who has escaped from an asylum for criminal lunatics, and if a person escapes while being conveyed to an asylum, etc., he may be retaken at any time in like manner as if he had escaped from said asylum (s. 11 (2), 47 & 48 Vict. c. 64).

As to officers of an asylum ill-treating lunatics, or any person or officer wilfully permitting or conniving at lunatic's escape, see ss. 322 and 323 of Act of 1890; and as to abuse of female lunatic (*t*), see s. 324.

(*t*) The offence is a misdemeanor punishable by two years' imprisonment; no "consent" or alleged consent is any defence.

Dumb or insane prisoner.—It is provided by the Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38), s. 2, that where in any indictment or information any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible according to law for his actions at the time when the act was done, or the omission made, then if it appears to the jury before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission. When such special verdict is found, the court is to order the accused to be kept in custody as a criminal lunatic (*z*).

If at any time during the hearing it is found that the person charged is mute from the visitation of God, or incapable of understanding the proceedings, the jury will be discharged, and the prisoner detained under the Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2, which statute provides the course to be pursued on the trial (*R.* v. *Berry* (1876), 1 Q. B. D. 447; 40 J. P. 484; 45 L. J. 123).

To establish at the trial the defence of insanity, it must appear that the accused did not know the nature of the act he was doing, or that he did not know he was doing what was wrong.

In a Circular Letter dated November 25th, 1889, the Secretary of State protested against prisoners suspected of insanity being sent to prison in order that the prison may be used as a place of observation.

MALICIOUS DAMAGE.

Malicious injury to property of all kinds is punishable under the Malicious Damages Act, 1861 (24 & 25 Vict. c. 97). In order to constitute an offence within the meaning of the statute, the act must have been done *maliciously*.

The word "maliciously" must be understood as meaning *purposely* as distinguished from *in ignorance or by accident*. If the act be done wilfully or *wantonly*, it will be presumed to have been done maliciously.

Malice in ordinary acceptation means ill-will against any person, but in legal sense means wrongful act done intentionally without just cause or excuse (BAYLEY, J.).

(*z*) The law as to legal responsibility as laid down by the judges in *R.* v. *McNaughten* (1843), 10 Cl. & Finn. 200, remains unaffected by this statute.

Where a person who fired at a boat to deter a party in it from shooting wild fowl, unintentionally shot a man in the boat, the act was held to have been done maliciously (*R.* v. *Ward* (1872), 36 J. P. 453; 41 L. J. 69; see also *R.* v. *Welch* (1875), 40 J. P. 183; 45 L. J. 17).

The provisions of the Act shall equally apply whether the offence be committed from malice conceived against the owner of the property or otherwise (*a*); and it shall be sufficient to prove that the party accused did the act with an intent to injure or defraud, without proving an intention to injure or defraud any particular person (*b*).

Section 61 of Act authorises the *arrest* of persons committing offences against the Act. See also s. 57.

As to killing domestic animals, fowls, etc.—Setting a rat trap in a private garden to catch cats or dogs trespassing there is not unlawful: a conviction under this section was quashed (*Bryan* v. *Eaton* (1875), 40 J. P. 213, Treat. 39 J. P. 402); but if the animal is taken alive and afterwards killed, we think the offender might be convicted. Placing poisoned flesh in an inclosed garden for the purpose of destroying a dog in the habit of straying there, is not acting maliciously within this section (*Daniel* v. *Janes* (1877), 2 C. P. D. 351; 41 J. P. 712), but, *semble*, it is an offence within the Poisoned Flesh Prohibition Act, 1864 (27 & 28 Vict. c. 115), if the garden is not attached to a house. A farmer shot two fowls while trespassing on his land where seed had been recently sown. The owner had been warned against the trespass, there being a hole in the wall through which fowls entered. The Queen's Bench Division held that as defendant acted without malice and in defence of his crop, the court was bound by *Daniel* v. *Janes*, *ante*, and quashed the conviction. MATHEW, J., said the effect of *Daniel* v. *Janes* is to give a licence to kill any animal found trespassing (*Smith* v. *Williams* (1892), 56 J. P. 840; 37 Sol. J. 11; 9 T. L. R. 9). But the former would not have been free from liability in a civil action, unless it could have been shown his property could not have been otherwise protected (Stone's Justices' Manual, 37th edit., p. 867).

MANSLAUGHTER.

See "HOMICIDE," *ante*.

MANTRAPS AND SPRING GUNS.

Any person is guilty of a misdemeanor who sets, causes, or suffers to be placed, any spring gun, mantrap, or other engine calculated to destroy human life, or inflict grievous bodily harm upon a trespasser or any person coming in contact therewith, elsewhere than in a dwelling-house for its protection, from sunset to sunrise (Offences against the Person Act, 1861, s. 31).

(*a*) See s. 58 of Act.

(*b*) See s. 60.

MARGARINE.

See title, "FOOD AND DRUGS," *ante*.

MARINE STORE DEALERS.

Sections 538—543 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) apply to marine store dealers, who are required to have their names, together with the words "dealer in marine stores," legibly painted on their premises. A dealer is also required to keep books, and enter therein an account of the articles purchased, with the name and description of the person from whom purchased. Penalty, in default, £20; for second offence, £50.

A dealer is prohibited from buying marine stores from any person apparently under the age of sixteen years, nor is he permitted to cut up any cable or similar article exceeding five fathoms in length, or unlay same into twine, etc., without obtaining permit, and publishing the notice required by the Act.

A "dealer in marine stores" is described as a person buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any description.

Persons living in inland towns and dealing in old iron and other articles not belonging to a wreck or ship, or otherwise connected with maritime purposes, are frequently styled "marine store dealers," but it is questionable whether they can be considered "dealers" within the meaning of the Act or bound to comply with its provisions. See 19 J. P. 364; 22 J. P. 614.

Dealers in old metals, however, are now subject to the provisions of the Old Metal Dealers Act, 1861 (24 & 25 Vict. c. 110), and such dealers, as well as marine store dealers, come under the provisions of s. 13 of the Prevention of Crimes Act, 1871. See title, *post*.

MARRIED WOMEN'S PROPERTY ACT, 1882.

See title, "WIFE," *post*.

MASTER AND SERVANT.

False character.—If any person shall personate a master and give a false character to a servant or assert in writing that a servant has been hired for a period of time or was discharged at any time other than the time for and at which he has actually been hired or discharged, or that he has been in previous service, contrary to truth, or if any person shall offer himself as a servant

pretending to have served where he has not served, or with a false certificate of character, or shall alter a certificate, or shall pretend not to have been in any previous service, contrary to truth, such offenders are liable on conviction before two justices of the peace to be fined £20, or in default three months' imprisonment (*c*).

Discharge.—A domestic or menial servant may be discharged without notice for a reasonable cause, such as moral misconduct, wilful disobedience to a lawful order, or neglect of duty; and in such cases the servant is not entitled to any wages from the day he is discharged, except those then due.

Larceny by servants.—Where a servant is charged with larceny of money or chattel placed under his care, he will be as much guilty of larceny if he disposed of the property as if he had taken it out of the actual custody of his master, because the possession of the servant is in law the possession of the master. An unauthorised gift by a servant of his master's goods will be as much a felony as if he had sold or pawned them.

Misappropriation by servant — Corn for horses, etc. — A servant, contrary to his master's orders, taking from his master's possession any corn, roots, pulse, or other food for the purpose of giving the same to any horse or animal belonging to his master, shall not be guilty of felony; but shall, on conviction before two justices, be liable to three months' imprisonment, or forfeiture not exceeding £5. The justices may dismiss the case if deemed too trifling (26 & 27 Vict. c. 103).

MERCHANDISE MARKS ACT, 1887.

(50 & 51 VICT. c. 28.)

By the Merchandise Marks Act, 1887, the law relating to fraudulent marks on merchandise is consolidated and amended.

Offences.—Forging or falsely applying trade marks or trade descriptions, selling, etc., goods with false trade mark.

Penalty on conviction on indictment, imprisonment for two years or fine, or both; on summary conviction, four months or fine, and forfeiture of chattel.

The statute contains provisions for prohibiting the importation of goods which, if sold, would be liable to forfeiture (s. 16).

(*c*) A master is not bound to give a servant a character (*Carroll* v. *Bird* (1801), 3 Esp. 201).

MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. c. 60.)

This Act consolidates the laws relating to merchant shipping.

The Act enumerates offences which may be committed by seamen, ship owners, apprentices, pilots, passengers, etc., and contains provisions regarding marine store dealers, wreck salvage, fishing boats, etc.

METAL DEALERS.

See title "OLD METAL DEALERS," *post*.

MIDWIVES.

The Midwives Act, 1902 (2 Edw. 7, c. 17), provides for the certification of midwives, and for the appointment of a central midwives board for the purpose of (*d*) regulating their appointment and control. It came into operation, except where otherwise provided, on April 1st, 1903.

Certification.—From and after April 1st, 1905, any woman who, not being certified under Act, shall take and use the name or title of midwife or any name or title implying that she is specially qualified to practice midwifery, shall be liable to a penalty of £5.

From and after April 1st, 1910, no woman shall, habitually and for gain, attend women in childbirth, otherwise than under the direction of a qualified medical practitioner, unless she is certified under the Act. Fine £10. (S. 1 (2).)

Emergency.—The section is not to apply to anyone rendering assistance in emergency.

"Midwife" means a woman who is certified under Act, unless the context otherwise requires.

MINES.

The Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), consolidates and amends the law relating to mines of coal, stratified ironstone, shale, and fireclay.

The Act of 35 & 36 Vict. c. 77, consolidates the laws relating to metalliferous and other mines.

Boys under twelve and females are not to be employed below ground. As to child labour underground, see title, "CHILDREN," *ante*.

As to larceny from and malicious injury to mines, see Larceny Act, 1861, c. 96, s. 38, and Malicious Damage Act, 1861, c. 97, s. 28.

(*d*) Rules have been made by the Board and approved by the Privy Council. See London Gazette, August 18th, 1903 ; 67 J. P. 400.

MONEY-LENDERS ACT, 1900.

(63 & 64 VICT. c. 51.)

The Act amends the law with respect to persons carrying on business as money-lenders.

S. 1 enacts that where proceedings are taken in any court by a money-lender for the recovery of any money lent, etc., and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the money-lender and the person sued, and may re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable.

S. 2 provides for the registration of money-lenders, their names, addresses, etc. Penalty for contravention of section, fine £100 (second or subsequent offence, imprisonment).

S. 3.—Regulations as to registration to be made by Commissioners of Inland Revenue, subject to approval of Treasury.

S. 4.—Penalties for false statements, etc. Imprisonment, two years, or fine of £500.

S. 5.—Amendment of the Betting and Loans (Infants) Act, 1892, as to presumption of knowledge of infancy.

S. 6.—The expression "money-lender" shall include every person whose business is that of money-lending, or who advertises or announces himself in any way as carrying on that business. It shall not include pawnbrokers, friendly, benefit and loan societies, bankers or insurance offices carrying on business, not having for their primary object the lending of money.

MURDER.

See "HOMICIDE," *ante*.

MUSIC AND DANCING.

PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

(53 & 54 Vict. c. 59.)

In districts outside a radius of twenty miles from the metropolis within six months of *the adoption by the local authority* of Part Four of this Act, every house, room, garden, etc., kept or used for public

music, dancing or singing, must be licensed by the licensing justices of the licensing district. Penalty for keeping, etc., an unlicensed house not exceeding £5 a day. Non-observance of any of the terms of the licence, not exceeding £20 and a daily penalty not exceeding £5 recoverable summarily and the justices may revoke the licence (s. 51). Justices in *petty sessions* may grant *temporary* licences for not more than fourteen days. Unlicensed places used for music, etc., are deemed disorderly houses. See also "THEATRES," *post.*

MUSIC—PIRATED MUSIC.

The Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15), provides a summary remedy to prevent the sale of pirated copies of any musical work.

The police can enforce the provisions of this Act when required. Several cases have been reported of large seizures of copies of pirated music, the result of raids made at the instance of the Music Publishers' Association. In one case, where 500 copies were seized, the music which was marked "two shillings per copy" was being sold to the public at twopence to fourpence per song.

NUISANCES.

A public nuisance is such an inconvenient or troublesome offence as annoys the community in general, and not a few individuals only, and is indictable as a misdemeanor. No length of time will legalise a nuisance.

Section 91 of the Public Health Act, 1875, defines "nuisances," under that Act (*e*) as :

1. Any premises in such a state as to be a nuisance or injurious to health.

2. Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit so foul or in such a state as to be a nuisance or injurious to health.

3. Any animal so kept as to be a nuisance and injurious to health.

4. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family.

5. Any accumulation or deposit which is a nuisance or injurious to health.

But a penalty is not to be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on of any business or manufacture, if it is proved to the satisfaction of the court not to have been kept longer than is necessary for the purpose, and that the best available means have been taken for preventing injury to the public health.

The exposure of persons in public having contagious disease is a nuisance under Public Health Act, 1875 ss. 126—129

(*e*) See title "PUBLIC HEALTH ACTS," *post.*

Section 28 of the Town Police Clauses Act, 1847, deals with nuisances in streets. See title, *post*; see also title "RIOTS, ETC.," *post*.

Every unauthorised obstruction of the highway (*f*) is a nuisance. See title "HIGHWAYS," *ante*.

An encroachment or inclosure of a town or village green, also any erection (*g*) thereon, or disturbance or interference or occupation of the soil thereof, which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, is a public nuisance (Commons Act, 1876 (39 & 40 Vict. c. 56), s. 29).

Keeping ferocious animals without proper control is a nuisance.

Duty of police.—If a constable believes a nuisance to exist in any place so as to endanger health, he should give information in writing to the sanitary authorities. *A constable is not authorised to enter any house or premises to seek for a nuisance without the consent of a justice.*

Offensive trades.—An offensive trade, either from noise or smell, is a nuisance (28 J. P. 194).

Any person establishing any offensive trade such as bone, soap, or tripe boiler, without consent of local authority, is liable to penalties (38 & 39 Vict. c. 55, s. 112). Complaint may be made to a magistrate if any ten inhabitants, any two qualified practitioners, or the medical officer of the local authority certify that such trade is a nuisance and injurious to health.

Steam whistles.—Persons using steam whistles or trumpets in factories, etc., for the purpose of summoning or dismissing workmen must obtain sanction of sanitary authority, which may be revoked on complaint of person in the neighbourhood (47 J. P. 744).

Procedure.—The mode of prosecution for common law nuisances is by indictment for misdemeanor, punishable by fine or imprisonment, or both, and abatement of the nuisance at the cost of the defendant, or a civil action for prohibition and damages may be maintained by a person aggrieved.

Under Public Health Act, 1875, special provision is made for summary procedure.

(*f*) In *R.* v. *Graham and Burns* ((1888), 32 Sol. J. 179, Stone's Justices' Manual, 37th edit., pp. 735, 1002), CHARLES, J., ruled that there is no right to hold public meetings in Trafalgar Square or in any other public place, but that such places are "for people to pass along," a use which is directly in conflict with that for public meetings.

(*g*) As to the nuisance created by a "merry-go-round," see *Lambton* v. *Mellish* (1894), 58 J. P. 242. As to gipsy encampment, see *Att.-Gen.* v. *Stone* (1896), 60 J. P. 168.

OBSCENE BOOKS.

The Obscene Publications Act, 1857 (20 & 21 Vict. c. 83), contains provisions for the suppression of trade in obscene books, prints, drawings, etc. Offenders can also be punished under the Vagrancy Act, 1824. See title "Vagrants."

Section 1 of Act provides for the issue of a warrant under certain circumstances to search for and seize all such books, pictures, etc., kept in any house, shop or other place. The warrant can only be issued by a stipendiary magistrate or two justices, and upon complaint on oath embodying circumstances of offence.

See also "Indecent Advertisements Act, 1889," *ante*, and "Town Police Clauses Acts," *post*.

OLD METAL DEALERS.

The Old Metal Dealers Act, 1861, regulates the business of dealers in metals, and was enacted to diminish the facilities for disposing of stolen goods. The Merchant Shipping Act, 1894, contains provisions relating to marine store dealers (see p. 357, *ante*), and the Prevention of Crimes Act, 1871, s. 13, contains an important enactment as to purchasing metal in small quantities (*h*).

Metal must not be purchased from any person apparently under sixteen, nor before 9 A.M., or after 6 P.M.; nor must metal purchased be parted with within forty-eight hours.

Definition.—The term "dealer in old metals," shall mean any person buying and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods (s. 3).

Stolen property.—Where a dealer in metal is believed to have in his possession any old metal stolen or unlawfully obtained, a justice upon complaint on oath may issue a warrant to search for and seize such old metal.

A summons may subsequently issue requiring the dealer to appear before two justices and account for possession of articles

(*h*) Any dealer in old metals, who either personally or by any servant or agent purchases, receives, or bargains for any metal, new or old, in any quantity at one time of less weight than hereunder stated, is liable to a penalty of £5:

Lead or any composite thereof - - -	112 lbs.
Copper, brass, tin, pewter, German silver -	56 ,,

See title, "Prevention of Crimes Acts," *post*.

seized, and if he fail to satisfactorily account for same, then such dealer shall be liable to a penalty of £5, and for any subsequent offence £20, or three months' imprisonment. This provision is not to interfere with any proceeding by indictment for receiving stolen goods (s. 4).

Register.—The convicting justices may direct the dealer to be registered by the chief officer of police, according to Form in Schedule to Act; after such registration the dealer shall conform to certain regulations (s. 8 of Act). These regulations require books to be kept and entries made of metal purchased and sold, and names of persons from whom purchased.

Dealers who are registered must give notice at the police office of any removal of their place of business. Two justices may, by writing, authorise inspectors or sergeants of police to visit registered places of business and inspect books and goods.

OATHS ACT, 1888.

The "Oaths Act, 1888," enacts that every person upon objecting to being sworn, and stating as the ground of such objection that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath (s. 1).

PALMISTRY.

A prosecution against palmists was carried out in October, 1904, the report on which forms a valuable addition to other cases recorded. The defendants, Charles and Martha Stephenson (Keiro), were indicted under the Witchcraft Act of 1736 (9 Geo. 2, c. 5), and also for attempting to obtain money by falsely pretending that they had power and ability to foretell future events, and that the examination of the palms of the hands of persons enabled them to foretell future events which would thereafter happen to such persons:—*Held*, that evidence that one of the defendants used crystal balls and professed to be able, by gazing into the balls, to foresee future events was admissible, but that evidence that palmistry was a well recognised science was not admissible. The case was tried before the deputy chairman, North London Sessions, October 3rd, 1904. The jury acquitted the defendants on the first count, but convicted on the others. The defendants were ordered to enter into recognisances to come up for judgment when called upon.

PARISH COUNCILLORS (TENURE OF OFFICE) ACT, 1899.

(62 & 63 VICT. c. 10.)

An Act to enable parish councillors to hold office for three years.

Notwithstanding anything contained in the Local Government Act, 1894, from and after January 1st, 1900, the term of office of a parish councillor shall be three years. On April 15th, 1901, and on April 15th *in every third year then following*, parish councillors shall go out of office, and their places shall be filled by the newly-elected councillors.

PAWNBROKERS.

By the Pawnbrokers Act, 1872, persons receiving goods in pledge are required to keep books (described in Schedule 3 of the Act), showing entries of sales and goods received. They must produce them at a court, if required (s. 50); premises can be searched during business hours under the authority of a search warrant, and a constable executing such warrant can, if necessary, break open doors.

Pawns cannot be taken on Sundays, or on Christmas Day or Good Friday (*i*).

Illegal pawning.—Any person knowingly and designedly pawning anything the property of another person without authority is liable to a penalty of £5 in addition to the full value of the article pawned (*k*).

Under s. 103 of the Larceny Act, 1861 (see "LARCENY," *ante*), persons to whom any property shall be offered to be sold, pawned, etc., can, on suspicion that such property has been stolen, apprehend the party offering the same.

PEDLARS.

The Pedlars Act, 1871, was passed to prevent disreputable persons, such as tramps and beggars, going about and carrying out illegal practices under the pretence that they are in the due execution of a legitimate business.

(*i*) Pledges to be redeemable within twelve calendar months of pawning.

(*k*) Whether the offence of pawning the goods of another without his knowledge or consent will amount to unlawfully pawning only, or to larceny, will depend on the intent and ability of the party to redeem the goods in question (*R.* v. *Medland* (1851), 5 Cox C. C. 292; Stone's Justices' Manual, 37th edit., pp. 617, 631, 742).

The term "pedlar" means any hawker, pedlar, petty chapman, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, *travels and trades on foot* and goes from town to town or to other men's houses (*l*), carrying to sell, or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.

Exemptions.—Certificates need not be obtained by commercial travellers or other persons selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein and who buy to sell again, or selling or seeking orders for books as agents authorised in writing by the publishers of such books; sellers of vegetables, fish, fruit, or victuals: persons selling or exposing for sale goods, wares, or merchandise in any public mart, market, or fair legally established (s. 23).

Acting without certificate.—By s. 4 no one shall act as a pedlar without a certificate, and any person who acts as a pedlar without having obtained a certificate under this Act authorising him so to act, may be fined 10*s.* for first, and £1 for subsequent offences.

Certificates.—By s. 5 a pedlar's certificate shall be granted to any person by the chief officer of police of the (*m*) police district in which the person applying for a certificate has, during one month previous to such application, resided, on such officer being satisfied that the applicant is above seventeen years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar. The application and certificate shall be in the form given in the Schedule—fee, 5*s.* The certificate shall remain in force for one year from the date of issue. On the delivery up of the old certificate, or on sufficient evidence being produced to the satisfaction of the chief officer of police that the old certificate has been lost, that officer may, either at the expiration of the current year, or during the currency of any year, grant a new certificate in the same manner as upon a first application for a pedlar's certificate.

(*l*) Persons standing in the street to sell their goods and not going from house to house or town to town, do not seem to come within the definition of pedlar (37 J. P. 316).

Persons carrying missionary bags with articles for sale are not pedlars (*Gregg* v. *Smith* (1873), 28 L. T. 555; Stone's Justices' Manual, 37th edit., p. 744).

(*m*) Chief officer may depute his authority. See s. 22, p. 366.

The certificate authorises the person to act as a pedlar (*n*) within any part of the United Kingdom (s. 6).

For the purposes of the Markets and Fairs Act, 1847, it has the same effect, within the district for which it is granted, as a hawker's licence. See also Pedlar's Act, 1881, p. 366.

Register.—Section 8 provides for a register of certificates being kept in each district, with such particulars as the Home Secretary may direct.

By s. 9, forms of application for certificates shall be kept at every police office in every police district, and shall be given gratis to any person applying for the same, and all applications for certificates shall be delivered at the police office of the division or sub-division of the police district within which the applicant resides, and certificates, when duly signed by the chief officer of police, shall be issued at such office.

Sections 10 and 11 enact that a certificate must not be assigned or borrowed under a penalty of 20*s*.

By s. 12, any person who makes false representations with a view to obtain a pedlar's certificate, or forges or counterfeits a pedlar's certificate, or travels with same, shall be liable to a penalty of £2, and for any subsequent offence to six months' imprisonment.

Endorsements.—By s. 14, if any pedlar is convicted of any offence under the Act, the court before whom he is convicted shall endorse on his certificate a record of such conviction. The endorsements shall be evidence of the facts stated therein.

Begging, etc. — Section 16 provides for the pedlar being deprived of his certificate by order of the court. If convicted of begging, he must be deprived.

Appeal.—By s. 15, if the chief officer of police refuses to grant or endorse a certificate, the applicant may appeal to a court of summary jurisdiction in the place where such grant, etc., was refused, but must, within one week after the refusal, give to the chief officer of police notice in writing of the appeal. The appeal shall be heard at the next sitting of the court after the expiration of the said week, but the court may, on the application of either party, adjourn the case. The court shall hear and determine the matter of the appeal, and make such order thereon as seems just. Any certificate, by order of the court, shall have the same effect as if it had been originally granted by the chief officer of police.

(*n*) *Vagrant.*—A certificate does not exempt a person from being prosecuted under the vagrant law.

Production of certificate.—By s. 17, any pedlar shall at all times, on demand, produce his certificate to any justice of the peace; or to any constable or officer of police; or any person to whom such pedlar offers his goods for sale; or any person in whose private grounds or premises such pedlar is found. And any pedlar who refuses to show his certificate to, and allow it to be read and a copy thereof to be taken by, any of the persons hereby authorised to demand it, shall for each offence be liable to a penalty not exceeding 5*s*.

By s. 18, where a person acting as a pedlar either refuses to show his certificate or has no certificate, or refuses to allow or attempts to prevent any such opening or inspection of his pack, box, bag, trunk, or case as is authorised under this Act, it shall be lawful for any of the persons authorised to demand the production of the certificate, and also for any other person acting by his order or at his request and in his aid, to apprehend such offender, and forthwith to convey or cause him to be conveyed before a justice of the peace.

By s. 19, any constable or officer of police at any time may open and inspect any pack, box, bag, trunk, or case in which a pedlar carries his goods, wares, and merchandise; and any pedlar who refuses to allow such constable or officer to open or inspect such pack, box, bag, trunk, or case, or prevents or attempts to prevent him from opening or inspecting the same, shall be liable for each offence to a penalty of 20*s*.

"Chief officer of police."—Any act or thing by this Act authorised to be done by the chief officer of police may be done by any police officer under his command authorised by him in that behalf, and the term "chief officer of police" includes the police officer so authorised (s. 22).

The terms "police district" and "chief officer of police" are defined in Schedule I. of Act.

The Pedlars Act, 1881 (44 & 45 Vict. c. 45), enacts that a pedlar's certificate during the time for which it continues in force, shall authorise the person to whom it is granted to act as a pedlar within any part of the United Kingdom. As to hawkers, see title, "HAWKERS," *ante*.

PENAL SERVITUDE.

The punishment of transportation was abolished by 20 & 21 Vict. c. 3, s. 2, penal servitude being substituted in its place. Under 27 & 28 Vict. c. 47, s. 2, no person could be sentenced to penal servitude for a less period than five years, but the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), reduces the minimum

for sentences of penal servitude *from five to three years*; s. 2 of the Penal Servitude Act, 1864, which made the minimum five years, being repealed.

See also titles "PREVENTION OF CRIMES ACTS," *post*, and "CONVICTS," *ante*.

Convicts can obtain remission of one quarter part of their sentences (after deducting the first nine months during which they are undergoing separate confinement), by good behaviour in prison.

PERJURY.

Perjury is the wilful false representation of some fact material to the question at issue, made on oath before some authority legally competent to administer it, and having jurisdiction in the matter. Subornation of perjury is procuring another to take such false oath. The offence is a misdemeanor not triable at sessions. Maximum punishment, seven years penal servitude.

In general, *two witnesses* should depose to the fact sworn to, otherwise it would only be one oath against another. Strong circumstantial evidence, however, in support of the direct testimony of one witness, may warrant a conviction.

PERSONATION.

See False Personation Act, 1874 (37 & 38 Vict. c. 36).

Under Army Act, 1881, s. 142, any person falsely representing himself to belong to or to be a particular man in the regular or reserve forces shall be guilty of personation.

PETROLEUM.

The Acts relating to petroleum are 34 & 35 Vict. c. 105; 42 & 43 Vict. c. 47; and 44 & 45 Vict. c. 67. The first states the conditions as to the keeping of petroleum, the granting of licences by local authorities, and the mode of storage, conveyance, and testing.

Definition.—"Petroleum," as defined in Act of 1878, includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any product of petroleum or any of the above-mentioned oils, which, when tested in the manner prescribed in the Schedule to Act, gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometer.

Storage.—Petroleum must not be kept except by licence of local authority; if such licence is not obtained the petroleum, with

the vessel containing it, will be forfeited (penalty on occupier of place for contravention of Act), £20 a day. If, however, the petroleum is kept in separate vessels each containing not more than a pint, and is securely stopped, or if the total amount kept does not exceed three gallons, this forfeiture and penalty does not apply.

Dealers in petroleum are required to show their place of storage to the officer of the local authority upon his producing a certified copy of his appointment, and to sell him samples of the petroleum they keep. Penalty for refusing or obstructing such officer not to exceed £20 (ss. 11, 12).

Warrant.—S. 3 authorises issue of warrants to search, etc.

Petroleum (Hawkers) Act, 1881 (44 & 45 Vict. c. 67).—Persons licensed to keep petroleum may, if they also hold a hawker's or pedlar's licence, hawk petroleum either by themselves or by their servants.

S. 2 of Act contains regulations as to hawking, which are here summarised :

The petroleum shall be conveyed in closed vessels and not more than twenty gallons at any one time in any one carriage. The carriage shall be so ventilated as to prevent evaporation mixing with the air in such proportion as to be liable to produce explosion. No fire or light is to be brought near the carriage, and care must be taken to guard against escape of petroleum into house, building, drain or sewer. The petroleum shall be stored in some premises, duly licensed, both every night and also when the petroleum is not being hawked.

Precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorised persons having access to the petroleum.

No article or substance of an explosive or inflammable character shall be in the carriage while such carriage is being used for the hawking of petroleum.

For any contravention of section the petroleum, the vessels, and the carriage conveying same, are liable to be forfeited, and the licensee shall be liable on summary conviction to a penalty of £20.

Provided that—

(1) Where some servant of licensee or other person has committed the offence, such servant or other person shall be liable.

(2) Where the licensee is charged with contravention of section he shall be entitled to have any other person whom he charges as the actual offender brought before the court, and if the licensee proves that he had used due diligence to enforce the execution of the section, and that the said other person had committed the offence in question, the said other person shall be summarily convicted.

Power of seizure.—Constables, or any officers authorised by the local authority who have reasonable cause to believe that an infringement of the Act is being committed in relation to any petroleum, may seize and detain such petroleum, and also the

vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or was not an infringement of the Act.

As to petroleum in light locomotives, regulations were issued March 18th, 1903 (Home Office Circular).

Hawking in boroughs. — The hawking of petroleum within the limits of any municipal borough may be forbidden by any lawful authority.

PISTOLS ACT, 1903.

(3 EDW. 7, c. 18.)

The term "pistol" means a firearm or other weapon of any description from which any shot, bullet, or other missile can be discharged, and of which the length of barrel, not including any revolving, detachable or magazine breach, does not exceed nine inches.

The term "antique pistol" (*o*) shall not include any pistol with which ammunition is sold, or which there is reasonable ground for believing is capable of being effectually used.

The sale or hire of pistols to any person is illegal, unless such person produces a gun or game licence, or gives reasonable proof that he is a person entitled to use or carry a gun without a licence under s. 7 of the Gun Licence Act, 1870, or that, being a householder, he purposes to use such pistol only in his own house or the curtilage thereof, or that he is about to proceed abroad for a period of not less than six months, and produces a statement to that effect, signed by himself and by a police officer or a justice.

An entry of sale is to be made by seller in a book kept for the purpose. Penalty for contravention of Act, £5.

S. 4 of Act.—Restrictions on persons under eighteen years of age. A penalty of 40*s.* attaches to such persons if (unless specially exempted) they hire, use or carry a pistol; to sell, etc., a pistol to any such person, renders the seller liable to a penalty of £5.

Sale of pistol to insane or intoxicated person, penalty £25, or imprisonment three months.

POACHING PREVENTION ACT, 1862.

(25 & 26 VICT. c. 114.)

The duties of the constabulary in relation to "game" are very clearly defined under the Poaching Prevention Act, 1862 (*p*);

(*o*) The provisions of Act are not to apply where an antique pistol is sold as a curiosity or ornament (s. 8).

(*p*) The police have *no duties to discharge under the game laws*, which are enforced by the Excise, neither is it their duty to prosecute in cases of game trespass. See title "GAME," *ante*.

their powers are limited to the search, etc., of suspected persons found in any highway, street, or public place.

By s. 1 of the Act, "game" is defined as any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse and black or moor game (*q*).

S. 2 enacts that it shall be lawful for any constable or police officer in any county, borough, or place in Great Britain and Ireland, in any highway, street, or public place, to search (*r*) any person whom he may have good cause to suspect of coming from any land (*s*) where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person.

Should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, the constable can seize and detain such game, article, or thing. Penalty £5, and forfeiture of game, etc.

By the provisions of the Act, in cases of conviction, the game, etc., seized by the constabulary is to be sold, and the amount realised to be paid over to the treasurer of the county or borough, or the game, etc., destroyed by order of the justices.

The section does not empower a constable to take *the persons* into custody, but he should take possession of the gun, net, game, etc. (*t*).

(*q*) As to definition "game" under Game Laws, see title "GAME," *ante*.

(*r*) The search is limited to "highway, street, or public place." If the game is not seized on the highway the constable has no power to go off the highway for that purpose (*Turner* v. *Morgan* (1875), 44 L. J. 161), but seizure in hot pursuit may be in another place (*Lloyd* v. *Lloyd* (1885), 49 J. P. 630). An actual search is not necessary if the constable sees the game, gun, etc., actually on the person (*Hall* v. *Knox* (1863), 33 L. J. 1).

Whether a railway platform is a "public place" or not, has not been decided under this statute, but see *Ex parte Freestone* under title "VAGRANTS," *post*. Nor has a public-house to which poachers have been followed (43 J. P. 695). See also *Case* v. *Storey* (1868), L. R. 4 Ex. 319.

(*s*) It is not necessary to prove by direct evidence the specific land on which the game was killed or taken (*Evans* v. *Botterill* (1863), 33 L. J. 59).

(*t*) There must be a seizure of the gun, net, game, etc., by the constable; "seizure" (according to SMITH, J.) being a necessary condition in order to give the constable a right to apply for a summons. It is necessary that

The constable will be justified in searching a person if he has "good cause to suspect" him, although it may afterwards turn out his suspicion was unfounded, and no offence under the Act can be proved (*u*).

As to killing or taking hares or conies in warrens, see 24 & 25 Vict. c. 96, s. 17, title "Larceny," *ante*. See also same Act (s. 12) as to killing or taking deer; fish (s. 24); pigeons (s. 23); birds (s. 21); as to rooks, etc.; and as to eggs of swan, duck and game birds, see 1 & 2 Will. 4, c. 32, title "Game," *ante*.

POISONS.

By the Pharmacy Act, 1868, poisons can only be sold by pharmaceutical chemists or chemists and druggists, who must be registered under the Act. Such persons are required to keep a book, in which they are bound to make an entry of all sales of poisons, giving name and address of person to whom sold.

The Act prohibits the sale of poisons to persons unknown to the seller unless introduced by some person known to him, and requires that a label with the word "poison," etc., shall be affixed to the bottle or box containing such poison. Apothecaries, veterinary surgeons, and wholesale dealers in poisons are exempted from certain provisions of the Act, as also dealers in patent medicines.

Arsenic.—14 & 15 Vict. c. 13, contains special provisions regulating the sale of arsenic. See title "Arsenic Act," *ante*.

Poisoning with intent to murder, injure, etc., is treated of under 24 & 25 Vict. c. 100, ss. 11, 14, 19, 22, 59.

As to poisons and antidotes, see title "Ambulance," Appendix, *post*.

Drugging animals.—The Act 39 & 40 Vict. c. 13, prohibits any person wilfully administering to or causing to be administered to

the defendant should have succeeded in catching game to give the justices jurisdiction (*Jenkins* v. *King* (1872), 36 J. P. 277).

Ferrets.—A constable has no authority under the Act to seize dogs or ferrets (45 J. P. 198). Whether the constable can seize powder, shot, flasks, etc., see 31 J. P. 47.

(*u*) Where a constable saw a man with a gun in his hand on a public footway in the act of picking up a rabbit which another person threw to him out of the adjoining inclosed land from the spot where a gun had just been fired, and the man ran away and escaped for the time, it was held that actual search was not necessary to lay a foundation for the right to apply for a summons and proceed to a conviction (*Hall* v. *Knox* (1863), 33 L. J. 1).

or taken by any horse, cattle, or domestic animal (without reasonable cause or excuse) any poisonous drug or substance under certain penalties, unless the person be the owner, or acting by his authority.

The Poisoned Flesh Prohibition Act, 1864 (27 & 28 Vict. c. 115), renders it penal to lay poisoned flesh on land. Poisonous preparations can, however, be placed in stacks, houses, or inclosed gardens for the destruction of rats and mice, or in drains, provided the drains be protected so as to prevent any dog from entering.

The Poisoned Grain Prohibition Act, 1863 (26 & 27 Vict. c. 113), renders it penal to sell or expose for sale, or to set, lay, or sow or cause to be sown, grain so mixed with poison as to render it poisonous, and calculated to destroy life.

Putting poison to kill game renders offender liable to penalty of £10 (Game Act, 1831, s. 3).

Exception.—The use of any solution, etc., used for dressing, etc., any grain or seed for *bonâ fide* use in agriculture only, or the sowing of grain so dressed, is not prohibited.

POLICE (PROPERTY) ACT, 1897.

This Act enables Secretary of State to make regulations with respect to unclaimed property in possession of police. See "POLICE ACTS," CONSTABLES, *ante*.

POLICE AND CRIMINAL STATISTICS.

See title CONSTABLES, *ante*.

POOR PRISONERS DEFENCE ACT, 1903.

This Act is a short one, and contains but two operative sections. It has been found faulty, both as to the wording of the statute and the meaning and intention of the legislature previous to the passing of the Act. No doubt the main object was to assist only innocent people unjustly charged, but it was really rather on broader grounds that the Act was passed, for the arguments urged in support of the Bill were, first, that in criminal matters where skilled legal aid is on the side of the prosecution, it is contrary to the requirements of justice that no legal advice should be given to the prisoner. Secondly, that a prisoner without means should be in no worse position than one able to pay for legal assistance. Thirdly, that although it is the business of the judge to see that a prisoner's defence is fully developed, yet he is not in a position to do this as effectively as counsel properly instructed. Fourthly,

that in the case of chairmen of quarter sessions, often not lawyers, their task is greatly increased in the absence of legal assistance. The intention of the Act evidently was that prisoners should have a better and fairer trial. The Act, however, narrowed down the original intention by enacting in s. 1 (1) that a prisoner can only have legal aid provided two things happen. First, that he has no means; secondly, that he has disclosed a defence in the evidence tendered or statement made by him before the committing magistrate, and that the nature of his defence is such that it is desirable that he should have legal aid. See 68 J. P. 555.

The Lord Chief Justice (Lord Alverstone), when receiving the Lord Mayor at the Law Courts in November, 1904, referred to the Act as one the scheme and object and motive of which was, in his opinion, and in that of his brother judges, to induce innocent people who are unjustly charged, and who have a true defence, to disclose their defence at the earliest possible moment, and to induce them to abstain from that practice which has worked so much harm in the past of prisoners under all circumstances, whether innocent or guilty, reserving their defence. A guilty person may well reserve his defence, as he has not got one, but an innocent person should be encouraged to disclose it as soon as possible . . . the Act intends not that a man ought to get legal assistance to find out whether he has got a defence, but that if upon the evidence which is produced before the magistrate when the summons or information is being heard it appears that there is a defence which requires legal assistance, that reasonable assistance should be given to the prisoner in order to make clear that defence (68 J. P. 557).

POST OFFICE OFFENCES.

Postmen or drivers of mail carts, etc., guilty of any act of drunkenness, negligence, or other misconduct whereby the safety of a post letter bag or post letter may be endangered, or who wilfully mis-spend their time so as to retard or delay mails, or give false information of assaults or attempted robbery upon them, or commit other offences enumerated in the Post Office (Offences) Act, 1837 (7 Will. 4 & 1 Vict. c. 36, s. 7), are liable to a fine or imprisonment.

Under s. 25, the Home Secretary has power to authorise the Postmaster-General to inspect any letter sent through the post office, but it is a power which is rarely exercised, except where some injury to the State may be apprehended.

As to stealing of post letter or letter bags by post office officials, see title "Larceny," p. 301.

The Post Office (Protection) Act, 1884, provides for the punishment of a number of offences, such as placing explosive, dangerous, or noxious substances, or any fire or light in or against any letter box or injuring any letter box; sending by post any explosive, dangerous, or noxious substance; enclosing in a postal packet any indecent or obscene print; sending any such packet having any indecent words or marks upon it; fixing placards, etc., to post offices or letter boxes; imitating and using fictitious stamps, etc.

Telegram.—S. 11 of Act deals with offence of forging, altering, or disclosing the contents of a telegram. See also title "TELEGRAPHS," *post.*

PREACHING.

The Places of Religious Worship Act, 1812, requires any house or premises to be registered wherein more than twenty persons assemble for religious worship, but there is no specific law on the subject of open-air preaching or meetings for religious worship held in the public streets. If held in the street such meetings appear to stand on the same footing as other obstructions of the highway (see title "NUISANCES," *ante*), but where meetings in the streets for religious worship are conducted with decency and order, the excellence of the object would be an excuse for what otherwise might be considered an obstruction, provided ample space be left for the ordinary street traffic.

As to disturbances in street by the Salvation Army, see title "RIOTS, ETC.," *post.*

PREVENTION OF CRIMES ACTS.

The Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), had for its object, as its name denotes, the more effectual prevention of crime in this country. Its main provisions refer to the treatment of convicts on licence, who are required to report (*w*) themselves to the local police.

CONVICTS.

Any constable in any police district may, if authorised in writing by the chief officer of police of that district, without warrant, take into custody any convict who is the holder of a licence under the Penal Servitude Acts, if it appears to such constable that he is getting his livelihood by dishonest means,

(*w*) A further Act, passed in 1879, facilitates "reporting." See p. 378.

and may bring him before a court of summary jurisdiction for adjudication (s. 3).

If it appears that there are reasonable grounds for so believing, the licence holder shall be deemed to be guilty of an offence against this Act, and his licence shall be forfeited.

Penalty for breaking conditions of licence, three months' imprisonment (s. 4).

Reporting.—Every holder of a licence under the Penal Servitude Acts must notify his residence to the chief officer of police of district, and must notify every change of residence ; moreover every male holder of a licence shall, once a month, report himself at such time as may be prescribed by the chief officer of police of the district, either to such officer himself or to such other person as that officer may direct, and such report may be made personally or by letter as the chief officer directs (s. 5). See also p. 378.

If any holder of a licence who is at large in Great Britain or Ireland remains in any place for forty-eight hours without notifying the place of his residence to the chief officer of police of the district in which such place is situated, or fails to comply (without satisfactory excuse) with the requisitions of this section (s. 5) as to reporting change of residence, or as to reporting himself once in each month, he shall be guilty of an offence against this Act, and upon conviction his licence may be forfeited.

Registers.—Registers of criminals are to be kept, containing such particulars as the Home Secretary may require. The Home Secretary may make regulations as to the photographing of prisoners convicted of crime (39 & 40 Vict. c. 23).

Persons twice Convicted.

Where any person is convicted on indictment of a crime and a previous conviction of a crime is proved against him he shall, at any time within seven years after the expiration of sentence, be guilty of an offence against the Act, and be liable to imprisonment for one year under the following circumstances :

1. If, on being charged by a constable with getting his livelihood by dishonest means, it appears that there are reasonable grounds for so believing ;

2. Or if, on being charged with any offence, and required by court to give his name and address, he refuses to do so, or gives a false name or address ;

3. Or if he is found in any place under such circumstances as to satisfy the court that he was about to aid in the commission of any offence ;

4. Or if he is found in or upon any dwelling-house, or premises, or in or upon any shop, warehouse, or other place of business, or in any garden, orchard, or pleasure ground, without being able to account to the satisfaction of the court for his presence on such premises.

Arrest.—In the first mentioned case any constable, if authorised by the chief officer, may arrest without warrant. In the third case a constable may arrest without being authorised, and without warrant. In the fourth case anybody may arrest (s. 7) (*x*).

Police supervision.—A person twice convicted of a crime may be subjected to police supervision for seven years, and to such person the provisions of s. 5 of Act (1871), as to reporting, shall apply (s. 8).

Harbouring Thieves.

Publicans harbouring thieves may be fined £10, or sentenced to two (*y*) months' imprisonment, and in addition may be bound over to keep the peace for twelve months. Publicans are liable to forfeiture of licence (s. 10).

Assaulting Police.

Any person convicted of assaulting police in the execution of their duty shall be liable to a penalty not exceeding £20, and in default of payment to be imprisoned for three months, or to be imprisoned for six months, or in case of a second conviction within two years, nine months (s. 12).

This section is now extended by 48 & 49 Vict. c. 75, and applies to all cases of resisting or obstructing the police when in execution of duty, but in such cases the fine is not to exceed £5, or the imprisonment two months.

Metal Dealers.

The term "dealer in old metals" shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores.

Dealers in old metals purchasing quantities less than 112 lbs. of lead, or any composite thereof, or 56 lbs. of copper, brass, tin, pewter, German silver or spelter shall be liable to a penalty of £5 (s. 13).

Children of Convicts.

Section 14 provides for children (*z*) under the control of women convicts being sent to industrial schools.

(*x*) Extended by s. 6 of Penal Servitude Act, 1891.

(*y*) Similar provisions apply to brothel keepers under s. 11.

(*z*) The child of a female prisoner may be received into prison with its mother, provided it is at the breast; an authority from the committing magistrate should accompany the prisoner (Prison Rules, February 19th, 1878).

Vagrants.

Section 15 amends the Vagrancy Acts by making it unnecessary where a person is charged with intending to commit a felony to prove any particular acts, but the justices are to decide from the character of the accused and the circumstances of the case what his intention was.

Search for Property.

Any constable may, if authorised in writing by a chief officer of police, enter any house or premises in search of stolen property, and search for and seize any property he may believe to have been stolen, as if he had a search warrant, and the property seized corresponded to the property therein described. Where any property is so seized, the person on whose premises it was, or from whom it was taken, shall, unless previously charged with receiving, be required to account for such property (s. 16). Court may make order as to disposal of property, costs, etc.

A chief officer of police may give such authority—

1. When the premises to be searched are, or within twelve months have been, in the occupation of any person convicted of receiving or of harbouring thieves ; or
2. When the premises are in the occupation of any person convicted of fraud or dishonesty, and punishable by penal servitude or imprisonment, the chief officer need not on giving such authority specify any particular property, but may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods.

Previous Convictions.

Evidence of a previous conviction may be proved by producing a record of such conviction or extract, signed by the proper person, and proving the identity of the accused. Such record or extract shall, in the case of an indictable offence, consist of a certificate containing the substance and effect of the indictment and conviction, and purporting to be signed by the clerk of the court or other officer of the court by which such conviction was made, or by the deputy of such clerk or officer ; and in the case of a summary conviction shall consist of a copy of such conviction, purporting to be signed by any justice of the peace having jurisdiction over the offence or by the clerk or other officer of the court by which such conviction was made, or to which such conviction has been returned (s. 18).

A record or extract of any conviction shall be admissible in evidence without proof of the signature or official character of the person signing same.

A previous conviction in any one part of the United Kingdom may be proved against a prisoner in any other part of the United Kingdom.

A fee of 5*s.* may be charged for a record of a conviction.

The mode of proving a previous conviction authorised by this section shall be in addition to and not in exclusion of any other authorised mode of proving such conviction.

RECEIVING.

In cases of receiving stolen property, evidence of other property stolen within twelve months being found in the same possession may be given. It may also be proved that the accused has within five years preceding been convicted of fraud or dishonesty: provided that seven days' notice in writing shall have been given to the accused (s. 19).

"CHIEF OFFICER OF POLICE."

"Chief officer of police" means in England, elsewhere than in the city of London and metropolitan police district, the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in the district in reference to which such expression occurs (s. 20).

PREVENTION OF CRIMES ACT, 1879.

(42 & 43 Vict. c. 55.)

Reporting.—Any holder of a licence and any person subject to police supervision required under the Act of 1871 to notify his residence, or any change of his residence, to a chief officer of police, shall comply with such requirements by personally presenting himself to the constable or person in charge of the police station or office of which notice has been given to such holder or person as the place for receiving his notification.

The power of the chief officer to direct that the required reports (ss. 5 and 8, Act of 1871) shall be made to some other person shall extend to authorise him to direct such reports to be made to the constable or person in charge of any particular police station or office without naming the individual person.

Any appointment, direction, or authority purporting to be signed by the chief officer of police for the purposes of this Act, or of ss. 5 and 8 of the Act of 1871, shall be evidence, until the contrary is proved, that the appointment, direction, etc., was duly made or given, and evidence that a person required as above mentioned to notify his residence or change of residence has failed to do so, shall be *primâ facie* evidence that the person has not complied with such requirement.

PRISONERS' DEFENCE ACT.

See title "POOR PRISONERS' DEFENCE ACT, 1903," *ante*.

PRISONS.

The laws relating to prisons other than convict or military or naval prisons are consolidated and amended by 28 & 29 Vict. c. 126. Persons aiding prisoners to escape are guilty of felony. The introduction, etc., into a prison, contrary to the regulations, of spirituous or fermented liquors or tobacco, or any letter or article, is punishable by fine or imprisonment.

Offences by prisoners are punishable by confinement in punishment cell or personal correction. See also 40 & 41 Vict. c. 21, ss. 14, 43.

The Prevention of Crimes Act, 1871, s. 6, contains regulations regarding photographing prisoners; the refusal to obey is an offence against prison discipline. See p. 375, *ante*.

As to "Escape of prisoner," "Prison breach," etc., see "CONSTABLES," *ante*.

The importation of "foreign prison-made goods" is prohibited by 60 & 61 Vict. c. 63.

Visiting committee.—A visiting committee is to be annually appointed of such number of justices, and in such manner as the Secretary of State may by rule prescribe in accordance with 28 & 29 Vict. c. 126, s. 13. The duties of the committee are defined by s. 14. See also s. 15 as to general power of entry into prison by justice.

PRIZE FIGHTS.

Combatants at a prize fight are each guilty of an assault upon the other. A sparring match with boxing gloves is no assault, as the parties consent to receive the moderate blows given; but if men agree to damage each other consent is immaterial. An assembly of persons to witness a prize fight is an unlawful assembly, and persons present and countenancing the fight are guilty of a misdemeanor. By a decision of the Court for Crown Cases Reserved, it was ruled by a majority of the judges present that simply witnessing a prize fight is not an offence, unless the spectators encourage it in some more active way than by their mere presence (*a*). It is the duty of magistrates to cause the intending combatants to be brought before them and bound over to keep the peace. An exhibition of skill in sparring is not illegal, but if

(*a*) *R.* v. *Coney* (1882), 8 Q. B. D. 534; 46 J. P. 404.

parties meet intending to fight and injure each other, it is a prize fight, whether the parties fight in gloves or not (*b*).

Railway companies are liable to penalties under 31 & 32 Vict. c. 119, s. 21, for knowingly providing trains for prize fights.

Challenge to fight a duel.—It is a misdemeanor to challenge another to fight a duel or even to provoke a challenge. See title "CHALLENGE," *ante*.

PUBLIC HEALTH ACTS.

The Public Health Acts consist of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and a number of statutes since passed dealing with special matters connected with health and sanitation, the most recent of which are the Public Health Acts Amendment Act, 1890, the Public Health Act, 1896, and the Public Health Act, 1904.

The Public Health Acts apply to the whole of England except the metropolis. The Act of 1875 contains 343 sections, and for the sake of clearness is distributed under eleven principal headings. England is divided into urban and rural sanitary districts (s. 5). Urban districts are boroughs (acting by the council); Improvement Act districts (acting by the commissioners); Local Government districts (acting by the local boards). A rural district is the area of any union which is not coincident in area with an urban district, nor wholly included in an urban district, and the rural district council are the rural authority.

Various penalties attach to the non-observance of the provisions of the Act, and these penalties are enforceable and recoverable by the local authority.

The local authority may appear before any court, or in any legal proceedings by their clerk or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and such clerk, officer (*c*), or member is to be at

(*b*) *R.* v. *Orton* (1878), 39 L. T. 293; 43 J. P. 72.

(*c*) The local board of Torquay passed a resolution that the superintendent and the sergeant of the county police for the time being acting within the district of Torquay be authorised, as officers of the board, "to institute and prosecute, from time to time, all such proceedings as may be necessary" under certain specified clauses of an incorporated local Act. No separate police force for the district of Torquay existed, the police officers stationed there being a portion of the county constabulary, acting under the orders of the chief constable of the county, and they were in no way accountable to the local authority (Stone's Justices' Manual, 37th ed., p. 979).

The Queen's Bench Division quashed a conviction, and held that the local board could only delegate authority to their own officers (*Kyle* v. *Barbor* (1888), 52 J. P. 724; 58 L. T. 229). The attention of the court does not

liberty to institute and carry on any proceedings which the local authority is authorised to institute and carry on under the Act (s. 259 of Act).

Police powers.—The police may, however, under certain circumstances, be required to enforce some of the provisions of the Act relating to nuisances, common lodging-houses, infectious diseases, etc.

SANITARY PROVISIONS.

Under the head of "Sanitary Provisions" are included regulations as to sewerage (s. 21); house drainage (s. 23); buildings without drains, etc. (ss. 25, 26); privies, etc. (ss. 36—41); scavenging and cleansing streets and houses, filthy houses, etc. (ss. 43—46).

URBAN DISTRICTS.

Nuisances.—Any person who in any urban district keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person, or suffers any waste or stagnant water to remain in any dwelling-house for twenty-four hours after written notice to him from the urban authority to remove the same, or allows the contents of any watercloset or cesspool to overflow or soak therefrom, shall for every such offence be liable to a penalty not exceeding 40*s.*, and not exceeding 5*s.* for every day the offence is continued, and the urban authority shall abate every such nuisance, and may recover in a summary manner the expenses incurred from the occupier of the premises on which the nuisance exists (s. 47).

Sections 48—50 relate to offensive ditches, collection of matter, manure, etc.

Sections 60—70 as to water supply, polluted wells, etc.

Sections 73—75 as to occupation of cellar dwellings contrary to the provisions of the Act.

Byelaws.—An urban authority may also, under s. 44, make byelaws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health.

appear to have been directed to s. 189, under which the board could appoint any number of officers for the execution of the Act.

See also heading "Police Regulations," *ante*, and title "TOWN POLICE CLAUSES ACTS," *post*.

COMMON LODGING-HOUSE.

A person shall not keep a "common lodging-house" (*d*) unless the house is registered, and the number of lodgers to be received authorised (ss. 76, 77).

A house is not to be registered until it has been inspected and approved by some officer of the local authority (s. 78).

Section 79 relates to affixing name, etc., on premises.

Section 80 provides for the making of byelaws by the local authority.

Section 81 requires that there shall be a proper water supply (*e*) to such houses.

The keeper of a common lodging-house is required to lime-wash the walls and ceilings of his house in the first weeks of April and October in every year; penalty for failing to do so, 40*s*. (s. 82).

The keeper of a house, if required, is bound to furnish a report of all persons resorting to his house during preceding day or night (s. 83).

Immediate notice has to be given of outbreak of fever or infectious disease (*f*) (s. 84).

The keeper of a lodging-house is liable to a penalty of £5 if he refuses access to the house or any part of it at any time to any officer of the local authority (s. 85).

By s. 89 of the Act the expression "common lodging-house" includes in any case in which only part of a house is used as a common lodging-house, the part so used of such house. This is the only definition of the term "common lodging-house" given in the Act (*g*).

Byelaws.—Section 90 empowers the Local Government Board to make byelaws for the regulation of houses let in lodgings.

NUISANCES.

For the purposes of this Act, s. 91 defines as nuisances—

(1) Any premises in such a state as to be a nuisance or injurious to health (*h*); (2) any pool, ditch, gutter, washhouse, privy, urinal, cesspool,

(*d*) For meaning of term, see title "COMMON LODGING-HOUSES," *ante*.

(*e*) The Public Health (Water) Act, 1878 (41 & 42 Vict. c. 25) amends the Act of 1875 so far as relates to the supply of water.

(*f*) See heading "INFECTIOUS DISEASES," *post*, p. 384, as to removal to hospital.

(*g*) A lodging-house open to all comers, where pedlars and persons suspected of vagrancy are received at sixpence a night, and have their meals in one common room, is "a common lodging-house" under the Act (*Langdon* v. *Broadbent* (1877), 42 J. P. 56, 67; 37 L. T. 434).

(*h*) Section 97 of Act empowers the court to prohibit any premises being used for habitation which, in the opinion of the court, are unfit for human habitation.

drain, or ashpit, so foul or in such a state as to be a nuisance or injurious to health : (3) any animal so kept as to be a nuisance or injurious to health ; (4) any accumulation or deposit which is a nuisance or injurious to health ; (5) any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family ; (6) any factory, workshop, or workplace (not already under the operation of any general Act for the regulation of factories or bakehouses), not kept in a cleanly state, or not ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, that is a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein ; (7) any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and is used for working engines by steam (*i*), or in any mill, factory, dye-house, brewery, bakehouse, or gasworks, or in any manufactory or trade process whatsoever ; (8) any chimney (not being the chimney of a private dwelling-house) sending forth black smoke (which need not be proved to be injurious to health) in such quantity as to be deemed a nuisance.

The above shall be deemed to be nuisances liable to be dealt with summarily under the Act (s. 91).

Penalties varying from 10*s.* to £20 attach.

Certain "exceptions" are contained in a proviso to the section.

Notice of nuisance.—Under s. 93 of the Act information of any nuisance as defined in s. 91 of the Act may be given to the local authority by any person aggrieved, by any two inhabitant householders, by any officer of such authority, or the relieving officer, or any constable or officer of the police force of district.

Power of entry.—Under ss. 103 and 105, when proceedings are taken, the court before whom the case is heard may adjourn the hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for the purpose of such examination. Any constable authorised under this section shall have the like powers and be subjected to the like restrictions as if he were an officer of the local authority.

Under s. 106, when it is proved to the satisfaction of the Local Government Board that a local authority has made default in the performance of their duty, in relation to nuisances, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceedings which the defaulting authority might institute with respect to such nuisance, but such officer of police shall not be at

(*i*) Steam whistles cannot be used for summoning workmen without sanction of local authority. See title "NUISANCES," *ante*.

liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or the warrant of a justice for the purpose of carrying into effect the enactment.

OFFENSIVE TRADES.

S. 112 restricts the establishing of offensive trades—such as blood, bone, or soap boiling—within the district of an urban authority without their consent; penalty, not exceeding £50; and on the certificate of two medical practitioners or ten inhabitants of the district of an urban authority that any place used for trade or manufacture causing effluvia is a nuisance or injurious to health, such authority shall make a complaint to a justice, who may order same to be carried before court of summary jurisdiction: a penalty of £5, and for subsequent offences penalties up to £200, can be inflicted on offender (s. 114).

UNSOUND MEAT.

Ss. 116 to 119 relate to sale or exposure for sale, of meat unfit for human food. The police are not empowered to interfere with or seize such meat, but the circumstances should at once be reported to the medical officer of health or inspector of nuisances. Penalty £20 for every animal or parcel of fruit, meat, etc., or three months' imprisonment.

INFECTIOUS DISEASES.

Ss. 124 and 125 relate to removal to hospital under the order of a justice and on a medical certificate of any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodging in a room occupied by more than one family, or on board any ship or vessel. The order may be addressed to a constable or officer of the local authority.

Where the body of one who has died from infectious disease is retained in a room in which persons live or sleep, or any dead body is in such a state as to endanger the health of the inmates of the house or room, a justice may on a medical certificate order the body to be removed at the cost of the local authority to the mortuary and buried within a limited time.

Under s. 126 persons are liable to a penalty of £5 for exposing themselves in any street, public place, or public conveyance, etc., when suffering from any dangerous infectious disorder. If any person in charge of any person so suffering so exposes such person or offers, gives, lends, sells, transmits or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection, he is equally liable.

A person suffering from any dangerous infectious disorder is also liable to penalties for entering a public conveyance without notifying to the driver that he is suffering from such disorder. The driver is bound to disinfect the conveyance after use (s. 127).

Persons are liable to penalties (£20) for letting lodgings in house where person has been suffering from any dangerous infectious disorder without properly disinfecting house to the satisfaction of a medical practitioner as testified by his certificate (s. 128).

And persons are liable to penalties for making false statements when letting house, etc., when questioned by any person as to the fact of their being or having been therein, within six weeks previously, any person suffering from any dangerous infectious disease (s. 129).

S. 130 empowers Local Government Board to make regulations in cases of cholera or other epidemic.

The local authority may (*k*) order the disinfecting of houses and the disinfection of infected bedding (ss. 120, 121).

The Infectious Diseases (Prevention) Act, 1890 (53 & 54 Vict. c. 34), contains provisions as to the cleansing and disinfecting of premises, and as to retention for more than forty-eight hours of bodies of persons dying from infectious diseases.

Notification of Infectious Diseases (*l*).

Within the metropolitan boundary, and, *after the adoption* of the Infectious Diseases (Notification) Act, 1889 (52 & 53 Vict. c. 72), by the

(*k*) Rules for Disinfecting an Unoccupied Room.

Close every door and window, and stop up every opening or crevice with old rags or tow.

Fumigate by any of the following methods:

By carbolic acid.—Place some pure carbolic acid in shallow vessels around the room.

By chlorine.—Place a few saucers in different parts of the room, containing a mixture of one part of common salt, one part of black oxide of manganese, and two parts of oil of vitriol.

By iodine.—Place two drachms of iodine in a metal cup or vessel, and place a lamp or burning candle underneath it till it evaporates.

By sulphurous acid.—Burn sulphur in saucers.

By nitrous acid fumes.—Place several cups into saucers or basins containing hot water, and inside the cups put two ounces of nitrate of potash and one ounce of sulphuric acid.

Furniture and floors should be well washed or scrubbed with a solution of chloride of lime; the latter may be sprinkled with the powdered chloride of lime or Dougall's powder. Paper should be stripped from walls, and the walls and ceilings should be whitewashed.

(*l*) The terms "infectious" and "contagious" (catching) applied to a disease signify that it is communicable from the sick to the healthy.

The following are the principle infectious diseases: Eruptive fevers: measles, small-pox, and scarlet fever. Continued fevers: typhus, typhoid,

local authority, it will be the duty of the following persons to notify the existence of infectious diseases to the medical officer of health for the district, viz.: (1) The head of the family to which the patient belongs, and on his default (2) the nearest relative of the patient present in the building, or in attendance on the patient, and on their default (3) every person in charge of or in attendance on the patient, and on their default (4) the occupier of the building. In addition to this, the doctor attending has to send notice to the medical officer of health. Fine for failure to notify, 40*s*. The infectious diseases, of which notice must be given, include small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlatina, or scarlet fever, and typhus, typhoid, enteric, relapsing, continued and puerperal fevers, and the local authority may extend the Act to other infectious diseases.

EPIDEMIC DISEASES.

Under s. 134 of the Act of 1875, the Local Government Board is empowered to make special regulations in cases where any locality is threatened with or is affected by any formidable epidemic or infectious disease.

See also ss. 135—140.

BYELAWS, LICENCES, ETC.

The urban authority may make byelaws for the regulation of public walks or grounds, and may authorise any officer of the urban authority or any constable to remove from such grounds any person infringing byelaws (*m*) (s. 164).

An *urban* authority may make byelaws for prevention of danger from whirligigs and swings worked by steam power, for the use of firearms in shooting galleries and ranges (Public Health Act Amendment Act, 1890).

Horses and boats.—S. 172 relates to licensing horses, etc., standing for hire ; also to the licensing of pleasure boats.

Markets and slaughter-houses.—See ss. 167—170.

PROCEDURE.

Ss. 251—265 relate to procedure.

HOP PICKERS' AND FRUIT PICKERS' LODGINGS.

Local authorities may make byelaws for securing the decent lodging and accommodation of persons engaged in hop-picking (s. 314) ; and s. 2 of 45 & 46 Vict. c. 23, authorises the making

relapsing, and yellow fevers. Diphtheria, erysipelas, whooping-cough, and cholera.

(*m*) Or byelaws regarding pleasure boats on lake or ornamental water in public park.

of similar byelaws for persons engaged in picking fruit and vegetables.

POLICE REGULATIONS.

Town Police Clauses Act, 1847.—By s. 171 certain provisions of the Town Police Clauses Act, 1847 (*n*), are incorporated with the Public Health Act, extending to places that are under the latter Act the provisions of the former Act regarding obstruction and nuisances in the street, fires, places of public resort, hackney carriages, public bathing, etc.

The expression the "superintending constable," or "any constable or other officer appointed by virtue of this or the special Act," shall include any superintendent of police and any constable or officer of police *acting for or in the district of any urban authority*.

PUBLIC HEALTH ACT, 1883.

This Act was passed to make provisions with respect to the support of public sewers and sewage works in mining districts.

PUBLIC STORES.

The Public Stores Act 1875 (38 & 39 Vict. c. 25), consolidated and amended the law relating to public stores. The following sections of the Larceny Act, 1861, are incorporated with the Act by s. 12, *i.e.*, ss. 98—100, 103, 107—113, 115—121.

RAILWAYS.

Under the Railway Regulation Act, 1840, railway authorities have ample power to deal with persons wilfully obstructing them in the execution of their duty, or trespassing on their premises and refusing to quit the same (*o*).

Police can interfere if a breach of the peace is likely to occur, and they can take into their charge drunken persons or others handed over to them by the railway authorities.

Under s. 13, engine drivers, guards, porters, or other servants of any railway company are liable to imprisonment for two months or a penalty of £10 if found drunk whilst employed upon the railway. See also 5 & 6 Vict. c. 55, s. 17.

(*n*) See title, "TOWN POLICE CLAUSES ACT."

(*o*) In case of *Cobb* v. *Great Western Rail. Co.* (1893), 57 J. P. 258; the point was raised whether on allegation of passenger that he had been robbed the stationmaster was bound to stop the train:—*Held*, to be no duty of company's servants.

The Malicious Damage Act, 1861, ss. 35—38, deals with malicious (*p*) injuries to railways, engines, telegraphs, etc.

See Offences Against the Person Act, 1861, as to acts with intent to endanger passengers, etc. (*q*).

CHEAP TRAINS ACT, 1883.

Police travelling by railway on duty are conveyed at special rates under the provisions of the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34).

By s. 6 of Act, the charges for conveyance of officers and men and their families if entitled to be carried at the public expense, are fixed at the following rates, viz. :

When the number conveyed is less than 150, *three-fourths* of the fare charged to private passengers.

When the number is 150 or more, three-fourths for the first 150, and for the number in excess of 150 *one-half*.

To entitle members of police forces to conveyance at these rates they must—

(1) Be travelling on duty on the public service ; and

(2) Produce at the commencement of the journey a route, duly signed.

Members of police forces should, when travelling by railway, be furnished with a warrant or voucher, to be left with the booking clerk as the authority for the issue of tickets at the reduced rates fixed by the Act.

This can be drawn up in form used by the metropolitan police according to model given in Home Office Circular, dated April 8th, 1884.

RAPE.

For statutory provisions, see Offences Against the Person Act, 1861, also title "WOMEN AND GIRLS—PROTECTION OF," *post*. In cases of rape, the constable should arrest the person charged, and bring him and the woman before a magistrate, and also without delay, *if she consent*, have her person examined by a doctor. *This examination cannot be made without her consent.* See also title "ASSAULT," *ante*.

As to assaults on children, see title "WOMEN AND GIRLS—PROTECTION OF," *post*. In cases of assault, the child's person should at once be examined by a doctor, *if her parents consent*. The fact of the child having complained of the injury recently after it was received is confirmatory evidence. It is desirable, in order

(*p*) The word "maliciously" extends to acts done by boys mischievously (*R.* v. *Gutteridge* (1851), 15 J. P. 612),

(*q*) The practice of throwing stones from bridges at a passing train may come within this category.

to render her evidence credible, that there should be some concurrent testimony of time, place, and circumstances.

As to admissibility of statements (*r*) in cases of rape, see *R.* v. *Lillyman*, [1896] 2 Q. B. 167; 60 J. P. 536; 65 L. J. 195. A statement to be admissible must be made as speedily after the acts complained of as can be reasonably expected. HAWKINS, J., in delivering the written judgment of the court in *R.* v. *Lillyman*, *ante*, said: "The whole statement of a woman containing her alleged complaint should, so far as it relates to the charge against the accused, be submitted to the jury as a part of the case for the prosecution."

RECEIVERS.

The Larceny Act, 1861, ss. 91—99, contains provisions *re* criminality and trial of receivers of stolen property and also as to culpability of accessories.

Section 91, as to receivers in felonies; s. 95 in misdemeanors; s. 97 in summary offences.

Section 99, as to accessories.

An offender may be indicted and convicted either as an accessory (*s*) after the fact or for a substantive felony, and in the latter case whether the principal felon shall or shall not have been previously convicted or be amenable to justice.

In any indictment for stealing, a count for "receiving" may be added and *vice versa* (Larceny Act, s. 92).

The trial for an offence under ss. 91—95 of Larceny Act shall be in any county or place in which the person charged shall have or shall have had any of the property in his possession, or in any place in which the principal felon may be tried (Larceny Act, 1861, ss. 96, 114). The same applies to offences under Larceny Act, 1896 (59 & 60 Vict. c. 52), s. 1.

As to burden of proof in cases of receiving, and power of search under authority of a chief officer of police, see Prevention of Crimes Act, ss. 16, 19, pp. 377, 378.

(*r*) The following circumstances support the testimony of the woman ravished: Her credibility; good fame; marks of violence on her person; discovering the offence without delay and looking for the offender; if party accused has fled.

The following circumstances weaken her testimony: Evil fame; concealing the injury; if place of offence was where she might have been heard, and she made no outcry.

(*s*) If a husband, knowing that his wife has stolen goods, receives them from her, he may be convicted as a receiver (*R* v. *McAthey* (1862), 32 L. J. 35). As to feloniously receiving the goods of a husband taken away by his wife, see *R.* v. *Deer* (1862), 7 L. T. 366; and *R.* v. *Kenny* (1877), 41 J. P. 119; and title "WIFE," *post*.

REFORMATORIES.

If a youthful offender under sixteen years of age be convicted on indictment or summarily of an offence punishable with penal servitude or imprisonment, if he appear to the court to be not less than twelve years of age, or if it be proved that he has been previously convicted of a serious offence, the court may order him to be sent to a certified reformatory school for not less than three and not more than five years, provided the period expire before offender attains age of nineteen (Reformatory Schools Act, 1893, s. 1).

An inmate of reformatory wilfully neglecting or refusing to conform to the rules is liable to three months' imprisonment, and to a similar punishment for escape. Persons assisting an offender to escape or harbouring him are liable to fine or imprisonment.

Parent or guardian is liable to contribute *5s.* per week towards the maintenance of offenders sent to reformatory or industrial school.

The police are required to comply with any order issued by the inspector of reformatory schools directing inquiry as to ability of parents or others liable to contributute towards expenses of offenders.

REFORMATORY SCHOOLS ACT, 1899.

(62 & 63 VICT. C. 12.)

WHEREAS by section one of the Reformatory Schools Act, 1893, a court is empowered to order that, in certain cases therein stated, a youthful offender shall be sent to a reformatory school:

And whereas it is expedient that where a court orders a youthful offender to be sent to a reformatory school, that offender shall not in the first instance be sent to a prison:

Be it therefore enacted:

The Reformatory Schools Act, 1893, shall be read and have effect as if the following proviso were added at the end of section one, that is to say: "Provided that where the offender is ordered to be sent to a certified reformatory school he shall not in addition be sentenced to penal servitude or imprisonment."

RESCUE.

"Rescue" is the forcible liberation of another from legal custody. To constitute this offence the party must be in actual custody, though whether in that of a constable or private individual is not material, but in the latter case the party should know that the prisoner is in lawful custody, while in the former he is bound to take notice at his peril (1 Hale, 606). See "CONSTABLES," PART II., *ante*.

Rescue of goods.—The forcible rescue of goods distrained and rescue of cattle by breach of pound are offences at common

law, and have been made the subject of indictment (Russell on Crime, 6th ed., p. 882). If the taking be a mere trespass without violence it is not indictable.

RESTITUTION OF STOLEN PROPERTY.

Under the Larceny Act, 1861, s. 100, provision is made for the restitution of stolen property to the owner or his representative after the conviction of the offender, by means either of a writ of restitution or a summary order by the court.

By 30 & 31 Vict. c. 35, where after conviction it appears that the stolen property has been sold by the prisoner to an unknown third party, the court may order (on restitution of stolen property to prosecutor) that out of any moneys found on the prisoner an amount not exceeding the proceeds of such sale shall be delivered to the purchaser. Any person defrauded or injured by the committal of a felony may be awarded a sum not exceeding £100 as compensation, the same to be deemed a judgment debt due from the person convicted (Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 4.

It must be noted that the owner of the property cannot proceed to recover his goods from the thief until he has prosecuted him. See title "REWARDS," *post*. In the case of innocent third parties, the previous conviction of the thief is not a condition precedent to the recovery of the property (*Lee* v. *Bayes* (1856), 20 J. P. 694 ; 18 Q. B. 599). See *Bullock* v. *Dunlap* (1877) as to immunity of police (metropolitan) after acquittal of prisoner for detention of goods under justices' order (41 J. P. 56).

Property pawned.—By the Pawnbrokers Act, 1872, when the stolen property has been pawned with a pawnbroker the court may order its restitution to the owner either with or without payment to the pawnbroker of the amount of his loan on such property as the court may think fit (35 & 36 Vict. c. 93, s. 31).

Lost property.—The finder of lost goods has a good title to them against all the world except the true owner, although found within the shop of another person (*Bridges* v. *Hawkesworth* (1851), 18 L. T. 154).

MARKET OVERT.

Change of ownership.—When goods are sold in market overt according to usage of market the buyer acquires a good title to the goods provided he buys them in good faith and without notice of defect of title on part of seller (Sale of Goods Act, 1893, s. 22), but nothing in section is to affect the law as to the sale of horses. The ownership of stolen property is only changed by a sale in market overt (*White* v. *Spettigue* (1845), 9 J. P. 761, and 22 J. P. 374). The court may make an order for restitution, and should

the court refuse to do so the property (on conviction) will still revest in the owner (s. 24), who can recover in action of trover, but goods obtained by fraud will not revert.

"Market overt" is defined to be a fair or market held at stated intervals in particular places by virtue of a charter or prescription. In the city of London every shop is by custom market overt except on Sunday with regard to the articles generally offered for sale therein. Pawnbrokers' shops are, however, excepted from the custom by a statute of James I.

The Crown is not barred of its right to restitution of stolen property even by a sale in market overt, nor will such a sale protect a purchaser who knew that the goods he bought were stolen.

The House of Lords held in 1875 (*Hollins* v. *Fowler* (1875), 40 J. P. 53) that the owner could sue person detaining goods fraudulently taken, although innocently acquired from thief. The same rule was applied in *Lindsay* v. *Cundy* (1878), 3 App. Cas. 459; 26 W. R. 406; 47 L. J. Q. B. 481.

A conviction for false pretences on the prosecution by the owner revests the property in him notwithstanding the person who has the possession was a *bonâ fide* purchaser under a sub-contract or in market overt (*Bentley* v. *Vilmont* (1887), 12 App. Cas. 471; 52 J. P. 68; 57 L. J. Q. B. 18).

By the Sale of Goods Act, 1893, s. 28, it is enacted that where goods have been obtained by fraud not amounting to larceny, the property in such goods does not revest in the owner by *reason only of the conviction of the offender*. The effect of this is to apparently supersede the above decision, but the Queen's Bench Division having referred to s. 21 of the Act, which provided that nothing therein shall affect the Act, 1889, enabling an apparent owner to dispose of goods as if he were true owner, held that plaintiff could not recover possession of a piano from defendant, who had bought it of a person to whom plaintiff had sold it on the hire system, and who sold it without notice of plaintiff's right (*Payne* v. *Wilson* (1875), 43 W. R. 249).

REWARDS.

To corruptly take any money or reward upon account of helping any person to recover any chattel, etc., stolen (unless all diligence be used to bring offender to trial) is felony (Larceny Act, 1861, s. 101).

To advertise (*t*) for return of stolen or lost property using words purporting that no questions will be asked or inquiries

(*t*) See also Larceny Advertisement Act, 1870, when action is taken against printer, etc.

made subjects offender to a penalty of £50 (Larceny Act, s. 102).

Reward for information.—As to information leading to the "apprehension of the offender" (*u*) so as to entitle to recover the reward, see *Turner* v. *Walker* (1867), L. R. 2 Q. B. 301; 51 J. P. 594; 36 L. J. Q. B. 112; see also *Gibson* v. *Proctor* (1891), 55 J. P. 617.

RIOTS, etc.

A riot is a tumultuous disturbance of the peace by *three or more persons* (*v*) assembled together with intent to assist each other in the execution of some act which they afterwards actually execute. The offence is a *misdemeanor*. A "rout" is where they proceed to execute the act but do not execute it. If they assemble with riotous intent but do not proceed to action it is an "unlawful assembly" only.

A lawful assembly is not rendered unlawful by reason of the knowledge of those taking part in it that opposition will be raised to it, which may give rise to a breach of the peace. A meeting is not made unlawful by a proclamation issued by magistrates prohibiting it. There is no legal authority for such notice.

Affray.—An affray is the fighting of two or more persons in some public place, to the terror of the Queen's subjects, for if the fighting be in private it is not an affray but an assault. It differs from a riot in not being premeditated, and also two persons may be guilty of an affray, but it requires three or more to constitute a riot. The offence is a misdemeanor.

Salvation Army.—Regarding riots in connection with meetings (*y*) of the "Salvation Army." In *Beatty* v. *Gillbanks* (1882), 46 J. P. 789; 51 L. J. 117, the Queen's Bench Division held that magistrates had no authority to prohibit a meeting; that an assembly not designed to commit an unlawful act was perfectly legitimate.

(*u*) Where a reward is offered for "such information as will lead to the apprehension" of a felon, *a police constable* to whom the felon has voluntarily offered to surrender himself is not entitled to the reward (*Bent* v. *Wakefield and Barnsley Union Bank* (1878), 4 C. P. D. 1; 43 J. P. 55).

(*v*) The fighting of two or more persons to the terror of the King's subjects may constitute an "affray." See title "AFFRAY," p. 157, *ante*. As to "RIOT ACT," see heading, *post*.

(*y*) The remedy for noisy nuisances and disturbances in the public streets appears to be by indictment for a public nuisance, but a prosecution

At Norwich Assizes, February, 1883, FIELD, J., said with reference to processions of Salvation Army: The law upon the matter was very plain and simple. No one had a right to disturb the public peace, but everybody had a right to pursue a lawful object by lawful and quiet means, and in doing that peaceably and without offence to anybody, or without causing a nuisance, no one had a right to interfere; but if flags and banners or noisy musical instruments were used, the roadway obstructed, and people annoyed, however right the object, the thing carried to that extent was unlawful.

As to similar cases at Eastbourne (contrary to Local Improvement Act (*z*)), see *R.* v. *Clarkson and Others* (1892), 56 J. P. 375.

See also "The Salvation Army," Treat. 48 J. P. 659.

Military.—Where the civil power is insufficient to suppress a riot the military may be called upon by the magistrates to act, a *written* application being sent to the officer in command.

Although the military cannot be called upon to act unless it is evident that the constabulary force is inadequate, they may nevertheless be requested to hold themselves in readiness if required, and such a course if taken and known will frequently prevent an outbreak. The Queen's Regulations (clauses 50—63) define the duties of troops when thus called out. A magistrate must accompany troops.

The commission on the Featherstone riots reported to the House of Commons, December, 1893, "An order (to fire) from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists" (38 Sol. J. 106).

Wrecks.—If a vessel wrecked or stranded be plundered by persons riotously assembled, damages are recoverable in same manner as under the Riot (Damages) Act, 1886 (Merchant Shipping Act, 1894).

RIOT ACT.

The statute 1 Geo. 1, stat. 2, c. 5, known as the Riot Act, contains the following proclamation, which is to be read aloud by

against Mr. Herbert Booth, of the Salvation Army, for disturbances at Whitchurch failed.

(*z*) In places where a sufficient local byelaw is in force the nuisance may be dealt with summarily (*Gay* v. *Powell* (1884), 51 L. T. 92; *R.* v. *Powell* (1884), 48 J. P. 740.

a magistrate, sheriff, sub-sheriff, or mayor in the presence of the rioters after silence commanded :

Proclamation.—"Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George First for preventing tumults and riotous assemblies. 'God save the King.' "

The proclamation can only be read when *twelve or more persons* are "unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace." Should the persons commanded to disperse continue together for one hour after the reading of the proclamation they shall be guilty of *felony*. The police can arrest such persons and take them before a justice.

Special constables.—As to appointment of Special Constables in cases of riot, see "CONSTABLES," Chap. VI., *ante*.

Special constables for boroughs.—The special constables appointed in October in every year may be called upon to act by the warrant of a justice having jurisdiction in the borough, but not otherwise (*a*), such warrant reciting that, in his opinion, the ordinary police force of the borough is insufficient at that time to maintain the peace of the borough (45 & 46 Vict. c. 50, s. 196).

Public-houses.—Public-houses may be closed by order of two justices during a riot or if a riot be anticipated (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 23).

COMPENSATION FOR LOSSES BY RIOT.

(49 & 50 Vict. c. 38.)

By the Riot (Damages) Act, 1886, claim for compensation for damage done to a house, shop, or building, or the property therein in counties, must be made to justices in general or quarter sessions, and in boroughs to the town council ; but by the Local Government Act, 1888, s. 5, any matters arising under the Act are transferred from the justices to the county council.

Where a claim to compensation has been made in accordance with regulations to be made under the Act by the Secretary of State, a right of action is given to the person aggrieved.

(*a*) As to the power to require county police constables to render them assistance, see Police (County and Borough) Act, 1859 (22 & 23 Vict. c. 32) ; also Police Act, 1890, s. 25.

If the amount claimed does not exceed £100 the action must be brought in the county court. See regulations made by the Secretary of State, January 30th, 1894.

Growing crops, corn in stacks, or other property not being a house, etc., or within a house, are not embraced by the Act. If the loss is covered by insurance the amount obtained must be deducted from claim.

SACRILEGE.

Every one commits felony who breaks and enters any church, chapel, meeting-house, or other place (*b*) of Divine worship, and commits any felony therein, or being in any church, chapel, meeting-house, or other place of Divine worship, shall commit any felony therein and break out of same. Punishment—penal servitude for life or not less than three years, or imprisonment not exceeding two years (24 & 25 Vict. c. 96, s. 50). The offence is not triable at sessions.

SEAMEN.

The Seamen's Clothing Act, 1869 (32 & 33 Vict. c. 57), imposes penalties on persons purchasing seamen's property (defined in Act) in certain dockyard towns.

SEDITION OR TREASON FELONY.

Sedition may be either by writing or by words spoken. The offence consists in endeavouring to vilify or degrade the Sovereign in the esteem of his subjects, or to create discontent or disaffection, or to incite the people to tumult, violence, and disorder, or to bring the Government or Constitution into hatred and contempt, or to effect any change in the laws by the recommendation of physical force. Seditious meetings are such as are held for the purpose of accomplishing any of these objects, and those taking part in them are equally guilty with the promoters of same, but the legality of public meetings depends very much on the concomitant circumstances, as the people have an undoubted right to

(*b*) To break and enter any such place with intent to commit any felony therein is felony (Larceny Act, 1861, s. 57).

It is equally sacrilege to break into or steal in a Dissenting meeting-house as in a church.

meet and assert their opinions and discuss their grievances or supposed wrongs. A meeting calculated to endanger the peace or excite terror is an "unlawful assembly." See "RIOTS." See also Treason Felony Act, 1848 (11 Vict. c. 12).

SERVANTS.

See "MASTER AND SERVANT," *ante.*

SHOP HOURS REGULATION ACT.

See title "FACTORIES AND WORKSHOPS," *ante.*

STATUTORY CAUTIONS, ETC.

The law ordains that certain statutory cautions shall be given to prisoners before commitment for trial for indictable offences, and also in cases where offenders are dealt with summarily for certain offences under Summary Jurisdiction Act, 1879.

Caution to prisoner before commitment for trial for an indictable offence except where S. J. Act, 1879, s. 13, applies (11 & 12 Vict. c. 42, s. 18).

The chairman or one of the justices to say to the accused—"The charge against you is" (read the charge). "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down, and may be given in evidence against you upon your trial, and I give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to you to induce you to make any admission or confession of your guilt. But that whatever you shall now say may be given in evidence against you notwithstanding such promise or threat."

TRIAL OF CHILD.

By section 10 of the Summary Jurisdiction Act, 1879, on the summary trial of a child for an indictable offence, the chairman or one of the justices is to say to the parent or guardian of the child—"*The charge is*" (*read the charge*). "Do you desire the child to be tried by a jury, and object to the case being dealt

with summarily? Being dealt with summarily means that he will be now tried by this court. If you desire him to be tried by a jury he can be so tried at the next quarter sessions for this————."

If the offender be a young person (twelve and under sixteen years of age) charged with an indictable offence other than homicide, or an adult where the value of the property does not exceed 40*s.*, the question, "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" is to be addressed *direct* to the offender (42 & 43 Vict. c. 49, ss. 11, 12).

When the offence charged is that of obtaining money or goods by false pretences the court is to state, in effect, what a "false pretence" means. See title "FALSE PRETENCES," GENERAL SUBJECTS, *post*.

In case of summary conviction on plea of guilty of adult (value of property above 40*s.*), a somewhat similar caution and charge has to be given (42 & 43 Vict. c. 42, s. 13).

SUICIDE.

The attempt to commit suicide is an indictable misdemeanor at common law. Offenders may be committed for trial at assizes or quarter sessions. The police should keep a watch upon the movements of offenders whilst in custody lest they should again attempt to destroy themselves. If necessary a doctor should be called in (*c*).

If two persons agree to commit suicide together, and one of them, in pursuance of a common design, effects the object, the survivor will be guilty of murder (*May's Case*, November, 1872).

The Interments (felo de se) Act, 1882 (45 & 46 Vict. c. 19), provides that a body may be buried in any way authorised by the Burial Laws Amendment Act, 1880, with or without religious service. The statute 4 Geo. 4, c. 52, is repealed, which permitted burial between nine and twelve at night without religious rites. The custom of burial at cross roads with a stake through the body was abolished in 1823.

SUNDAY OBSERVANCE ACT.

(29 CAR. 2, c. 7.)

This Act, passed in the reign of Charles II. (1676), enacts that no drover, butcher, or waggoner, shall travel or come to his inn on

(*c*) As to poison and antidotes, see APPENDIX, *post*.

the Lord's Day (*d*), forfeiture, 20*s.*; and no tradesman (*e*), artificer, workman, labourer, or other person whatsoever, fourteen years of age or upwards, is to do or exercise any worldly labour, business, or work of his ordinary calling upon the Lord's Day (works of charity or necessity excepted). Forfeiture, 5*s.* in each case, leviable by distress; and if no sufficient distress, the offender may be committed to the stocks for two hours (29 Car. 2, c. 7, ss. 1, 2).

The costs may be included in the conviction and levied by distress under Summary Jurisdiction Act, 1848, s. 18; but it is doubtful whether justices can order imprisonment in default of distress. The offender cannot be put in the stocks for non-payment of costs (*R.* v. *Barton* (1849), 18 L. J. 56).

To publicly cry (*f*), show, or expose for sale any wares, fruit, goods, etc., on the Lord's Day renders the seller liable to forfeiture of the goods; but by s. 3 of Act milk can be sold before 9 a.m. or after 4 p.m.; and 10 & 11 Will. 3, c. 24, s. 14, authorises the crying or selling of mackerel before or after Divine service. There is no prohibition to the dressing of meat in families, inns, cookshops, or victualling houses on Sundays. 6 & 7 Will. 4, c. 37, s. 14, regulates Sunday baking.

There shall be no meetings, assemblies, or concourse of people out of their own parishes on the Lord's Day for any sports and pastimes whatsoever, nor any bear-baiting, bull-baiting, interludes, common-plays, or any unlawful (*g*) exercises and pastimes used by any person or persons within their own parishes. Every offender is to forfeit for every offence 3*s.* 4*d.* to be employed for the use of the poor of the parish, to be recovered by distress (3 Car. 1, c. 5); in default of distress, imprisonment (Summary Jurisdiction Act, 1848).

(*d*) The rigid enforcement of this part of the Act might lead to embarrassment, without an alteration in the market days of large provincial towns.

(*e*) The question as to whether a barber came within the words of the Act was raised in *Tharpe* v. *Priestnall* (1896), 60 J. P. 821; but the conviction was quashed on another point.

(*f*) A boy was proceeded against at Brighton for crying newspapers, May (1890), and an order was made for forfeiture of papers (L. J. Notes (1890), p. 292).

(*g*) This seems to refer to sports *ejusdem generis* with bear-baiting. In the absence of any local statutory restriction playing such games as cricket on a Sunday appears not to be illegal within people's own parishes, but a cricket match played between two parishes would be illegal, since one of the contesting elevens would necessarily walk or ramble out of their own parish.

Procedure.—Prosecutions must be commenced within ten days before one justice (29 Car. 2, c. 7, s. 4). By 34 & 35 Vict. c. 87, s. 1, no prosecution can be commenced without the consent in writing of the chief officer of police (*h*) or of two justices. Such justices cannot adjudicate in the case.

As to issue of warrants (*i*) and arrests on Sunday, see p. 97, *ante*.

As to shooting game on Sunday, see title "GAME," *ante*.

As to closing public-houses, see title "LICENSING LAWS," *ante*.

As to playing billiards, see title "BILLIARDS," *ante*.

SURETIES OF THE PEACE.

To keep the peace.—It is laid down (*k*) that wherever a person has just cause to fear that another will do him some bodily harm, as by killing or beating him, he may demand surety of the peace against such person.

Binding over a person to keep the peace is not in the nature of a punishment, but is to prevent the apprehended danger of a breach of the peace. The procedure is now regulated by the Summary Jurisdiction Act, 1879, s. 25, *ante*.

To be of good behaviour.—Legal authorities are not agreed as to all the offences for which this surety may be required. It is more comprehensive than the surety of the peace, as good behaviour includes the peace. It cannot be required for merely rash, quarrelsome, or unmannerly words, unless they tend to a breach of the peace, or to scandalise the Government by abusing those who are entrusted with the administration of justice, or to deter an officer from doing his duty. It may in some cases be required in cases of libel against private individuals. See *Haylocke* v. *Sparke* (1853), 22 L. J. 67.

This case was discussed in the Common Pleas Division on application for *certiorari* by an ex-policeman, who, having been dismissed from the force, seized every opportunity of using insulting and injurious language about and towards the Chief Constable, and was committed for six months in default of finding sureties to be of good behaviour.

COLERIDGE, L.C.J., held that a condition precedent was an oath by the applicant that he went in bodily fear. The applicant swore

(*h*) Consent must be obtained before information is laid.

(*i*) It was held in *R.* v. *Myers* (1786), 1 T. R. 265, that it was illegal to execute on Sunday a warrant of commitment for a penalty (Sunday Observance Act).

(*k*) Hawk. P. C. 5th Book, c. 60, s. 6.

he apprehended a breach by *himself* unless the defendant was bound over, but the converse was the condition necessary (*Phillips* v. *Gateshead JJ.*, Times, July 15th, 1879; see Law Times, July 19th, 1879; see also *Haslam* v. *Shaw*, Q. B. D., December 8th, 1882, noted in Times). There is therefore really no law by which the offender can be summarily punished for mere insulting language, unaccompanied by threats.

SWEARING.

By the Profane Oaths Act, 1745 (19 Geo. 2, c. 21) any person profanely cursing or swearing is liable to money penalties on conviction before one justice, varying according to the offender's degree and position.

Penalty—

For labourer, soldier, sailor, or seaman, 1*s.*;
For any other person under the degree of gentleman, 2*s.*;
Of and above degree of gentleman, 5*s.*;
In default imprisonment not exceeding ten days.

If proceedings be taken the information must be upon oath, and laid within *eight* days. Constables may seize offenders if unknown, and take them before a justice, who can convict on oath of officer.

The Act does not appear to apply to women.

TELEGRAPHS.

By the Telegraph Act, 1868, any person connected with the post office contrary to his duty disclosing or in any way making known or intercepting the contents of any message entrusted to the Postmaster-General is guilty of a misdemeanor. Punishment, imprisonment for twelve months. See also Telegraph Act of 1869.

Persons injuring telegraph wires, posts, etc., are guilty of a misdemeanor (24 & 25 Vict. c. 97, ss. 37, 38). See also under title "POST OFFICE OFFENCES," *ante*.

THEATRES.

The business of justices out of sessions in respect of the licensing of houses or places for the public performance of stage plays has been transferred to the county council by the Local Government Act, 1888, s. 7. The council may delegate their powers to the justices *in petty sessions*, or to a committee of the council, or to a district council.

The Theatres Act, 1843 (6 & 7 Vict. c. 68), contains special provisions as to the grant of these licences by justices. Applications have to be in writing, signed by the party making them, and countersigned by at least two justices (or councillors), who are required within twenty-one days to hold a special session (or meeting) for the purpose, seven days' previous notice being given (s. 5). The licence is to be granted to the actual and responsible manager, and must be under the hands and seals of at least four of the justices (or councillors) present, and must be signed and sealed in open court (or meeting), and publicly read by the clerk.

The justices (or council) are empowered to make rules for insuring order and to bind over the manager in a sum not exceeding five hundred pounds, and two approved sureties for due observance. The fee for licence is not to exceed five shillings for each calendar month during which the theatre is licensed. Penalty for performing or permitting play to be performed in unlicensed place, £10 (s. 11), and any person keeping an unlicensed place (*l*) is liable to a penalty of £20 a day (s. 2). Every person acting for hire in any play which has not been allowed or has been disallowed by the Lord Chamberlain is liable to a penalty of £50 (s. 15).

"Acting for hire" means acting where any money is taken directly or indirectly for admission, or where the play is performed in any place in which distilled or excisable liquor is sold (s. 16).

In any proceeding the burden of proof that the theatre is licensed, etc., lies on the party accused (s. 17).

Penalties recoverable before two justices or by action—imprisonment in default of distress (s. 19). Appeal to next general or quarter sessions (s. 20). Part penalties can be applied towards payment of prosecutor's expenses.

Proceedings must be taken within *six calendar months* after the offence is committed.

Stage play.—The word "stage play" shall be taken to include every tragedy, comedy (*m*), farce, opera, burletta, interlude, melo-

(*l*) Army and Navy recreation rooms are exempted.

(*m*) A "dialogue" between two persons in costumes and characters is within section (*Thorne* v. *Colson* (1861), 25 J. P. 101). Whether a performance is or is not a stage play seems to be a question of fact. "Sketches" at music halls are "stage plays."—Lord Chamberlain's Circular, 1894 (58 J. P. 369). [An amendment of this Act is much required. See Stone's Justices' Manual, 37th ed., p. 1034.]

drama, pantomime, or other entertainment of the stage or any part thereof. The Act does not apply to any theatrical representation in any booth (*a*) or show allowed by the justices, etc., in any lawful fair, feast, or customary meeting of the like kind (s. 23). The Act extends only to Great Britain (s. 24).

PROVINCIAL THEATRES.

Keeping order, etc. — The Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), which is by s. 171 of the Public Health Act, 1875, rendered applicable to all urban sanitary districts, empowers, by s. 21, commissioners (*i.e.*, the local authority) to give directions to constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort; and a wilful breach of such order is to be an offence, and is subject to a penalty not exceeding 40*s.* (*Vide* Geary's Law of Theatres and Music Halls, p. 30).

By s. 9 of the Theatres Act, 1843 (6 & 7 Vict. c. 68) the county council have power to make rules for enforcing order, etc., at the theatres licensed by them.

THREATS—THREATENING LETTERS, ETC.

Demanding money or property, etc., from any one by menaces or by force is felony, as is also the accusing or threatening to accuse any person of infamous or abominable crime with the view of extorting money, property, etc. Sending, etc., a letter threatening to murder or to burn or destroy any property, or to accuse of crime or to demand money, etc., with menaces is felony.

For statutory provisions as to above offences, see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 44—47; c. 97, s. 50; and c. 100, s. 16.

THRESHING AND CHAFF CUTTING MACHINES.

By the Threshing Machines Act, 1878, it is enacted that in order to prevent accidents the drum and feeding mouth of all threshing machines shall during the working of such machines be kept

(*a*) A tent or booth used by strolling players is not a "place of public resort," as deemed in s. 2 of Act (*Dargs* v. *Douglas* (1859), 28 L. J. 193); but a booth used as a temporary theatre is a "place" within s. 11 (*Tarling* v. *Fredericks* (1873), 38 J. P. 109). A single entertainment or even occasional use of room for music or dancing (p. 233) appears permissible. See *Gregory* v. *Jupp*, and *Syers* v. *Conquest* (1873), 37 J. P. 342.

sufficiently and securely fenced, so far as is reasonably practicable and consistent with due and efficient working.

The person to whom the machine belongs, or for whose service and benefit it is used, is to be deemed to have permitted the offence, unless he satisfies the court that he took all reasonable precautions to ensure observance of the Act. Police, on reasonable cause, may at any time enter premises to inspect machines.

Somewhat similar provisions operate *re* chaff cutting machines under Act of 1897 (60 & 61 Vict. c. 60).

TOWNS IMPROVEMENT CLAUSES ACT, 1847.

(10 & 11 VICT. C. 34.)

Certain sections relating to offences mentioned in the Towns Improvement Clauses Act, 1847, are incorporated with the Public Health Act, 1875 (ss. 160, 169). These are now in force in every urban sanitary district, and may be applied by the Local Government Board (under s. 276) to rural sanitary districts. Proceedings can only be taken by officers appointed under s. 253 of the Public Health Act, 1875 ; see title, *ante*.

OFFENCES.

1. Defacing numbers, etc., on houses or names of streets, etc. Penalty, 40*s*. (s. 64).

2. Occupier failing to renew, etc., numbers if required by local authority. Penalty, 40*s*.

3. Occupier or owner failing to remove after due notice any protection, etc., erected or placed, after the application of the Act, against or in front of any house or building, and which is an obstruction to the safe and convenient passage along any street. Penalty 40*s*. (s. 69).

4. Failing to alter when required by local authority any door, gate, or bar opening outwards on street. Penalty, 40*s*. (s. 71).

5. Occupier neglecting to keep in repair cellar covering in any pavement or footpath. Penalty for neglect, £5 (s. 73).

6. Occupier of house in or adjoining street is required, on notice from local authority, to put up shoot or trough to prevent water falling on persons passing along street or flowing over footpath. Penalty, 40*s*. for every day's default (s. 74).

7. Ss. 75—78 of Act define course to be pursued to compel owners to take down ruinous or dangerous buildings.

8. Any person altering or removing any bars or chains, lights put up by local authority during repairs of streets, etc. Penalty, £5 (s. 79).

9. Failing to put up sufficient fence or hoard, platform with rail, etc., during erection or repair of any building, or failing to keep same sufficiently lighted at night. Penalty, £5 (s. 80).

Where Part III. of the Public Health Acts Amendment Act, 1890, has been adopted other and additional regulations are substituted.

10. Unlicensed slaughter-houses. Penalty, £5 (s. 126). Further provisions as to slaughter-houses (licences) apply in cases where the Public

Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59, ss. 22—31), has been adopted.

11. S. 131 of Act deals with unwholesome meat, but inasmuch as unwholesome meat can be dealt with under 38 & 39 Vict. c. 55, s. 16 (Public Health Act, 1875), which statute extends to poultry, fish, and other kinds of food, prosecutions are usually carried out under that statute. See title "Public Health Acts," *ante*.

As to consumption of smoke, see s. 109 of Towns Improvement Clauses Act, 1847, which is not incorporated with the Public Health Act, 1875; also s. 91 of that statute as to consumption of smoke in places to which that Act applies.

TOWN POLICE CLAUSES ACTS.

(10 & 11 Vict. c. 89 (1847), and 52 & 53 Vict. c. 14 (1889)).

Certain sections relating to offences contained in the Town Police Clauses Act, 1847, are incorporated in the Public Health Act, 1875, under s. 171 of that Act. They are in force in every urban sanitary district, and may be applied to rural sanitary districts.

The police can enforce the provisions of the Act if appointed officers by the local board.

Some of the provisions of the Act regarding obstructions, nuisances, etc., are, as already stated, incorporated in the Public Health Act, 1875; but although such provisions can be enforced by the police in some urban districts, it is questionable whether they can be carried out in places where local boards exist except by officers appointed by the boards, inasmuch as s. 253 of the Public Health Act restricts the proceedings for recovery of penalties to the person aggrieved and to the local authority (*Kyle* v. *Barbor* (*o*).

As, however, many of the offences mentioned in the Town Police Clauses Act are also offences under the Vagrant Act, the Highway Acts, and the Licensing Act, 1872, offenders can frequently be dealt with under these Acts without reference to local boards.

Town Police Clauses Act, 1847.

Obstructions.—The local authority may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged, or liable to be obstructed, and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort. Penalty for every wilful breach of any order, not exceeding 40*s*. (s. 21); and

(*o*) See now under head of "Police Procedure," *post*, and letter of Secretary of State advising that offences under s. 28 of Act stand on a different footing.

the like penalty is imposed for breach of any order regulating the route of carriages, etc., during Divine service at any specified place of worship (s. 22).

Impounding.—If any cattle be at any time found at large in any street within the limits of the special Act (*p*) without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits or in such other place as the local authority appoint for that purpose, and may detain the same therein until the owner thereof pay to the local authority a penalty not exceeding 40*s*., besides the reasonable expenses of impounding and keeping such cattle (s. 24).

If the said penalty and expenses be not paid within three days after such impounding the pound keeper or other person appointed by the local authority for that purpose may proceed to sell, or cause to be sold, any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the local authority, and shall be by them paid, on demand, to the owner of the cattle so sold (s. 25).

Pound breach.—Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months (s. 26).

Power to provide pound.—The local authority may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the local authority (s. 27).

SECTION 28—NUISANCES.

The section relates to various nuisances in streets which *might* cause *obstruction, annoyance, or danger* to *residents or passengers*. A penalty of 40*s*. attaches. As to procedure under section, see heading "POLICE PROCEDURE," and Circular Letter of Secretary of State, *post*.

Every person who in any street (*q*), to the obstruction (*r*),

(*p*) The expression "the special Act" means any Act which shall be hereafter passed for the improvement or regulation of any town or district with which this Act shall be incorporated.

(*q*) "Street" includes any road, square, court, alley and thoroughfare or public passage (s. 3), but does not include a spot from which the public may be shut out by the owner of the soil (*Curtis* v. *Embery* (1872), 42 L. J. 39).

annoyance, or danger of the residents or passengers (*s*), commits any of the following offences, shall be liable to a penalty not exceeding 40*s*. for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days, and any constable or other officer appointed by virtue of this or the special Act (*t*) shall take into custody, without warrant, and forthwith convey before a justice any person who within his view commits any such offence.

Exposing animals, etc.—Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains, or breaks, or turns loose any horse or animal, or makes or repairs any cart or carriage (except in cases of accident, where repair on the spot is necessary).

Dogs.—Every person who suffers to be at large any unmuzzled ferocious dog (*u*), or sets or urges on any dog or other animal to attack, worry, or put in fear any person or animal.

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state.

Every person who, after public notice given by any justice, directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice.

Slaughtering cattle.—Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot.

Carts, etc.—Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the

(*r*) In *Innes* v. *Newman* it was held (Q. B. D.) that annoyance of *one inhabitant* by crying papers in street was sufficient to justify a conviction under a byelaw (58 J. P. 543).

(*s*) These words govern the whole of the section.

(*t*) The Home Secretary has advised that in view of s. 253 of the Public Health Act, 1875, only an officer of the urban sanitary authority can prosecute for offences other than those in s. 28 of this statute, but the case is different as regards s. 28. See title "Public Health Acts," Police Regulations, *ante*, and 58 J. P. 483.

(*u*) Two bites from a dog in the presence of the owner of the dog within half-an-hour are sufficient to prove "*scienter*" and to render the second bite actionable (*Parsons* v. *King* (1891), 36 Sol. J. 36).

same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who, in passing any other carriage, does not keep his, waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who by obstructing the street wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care.

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet (*x*).

Furious driving.—Every person who rides or drives furiously any horse or carriage (*y*), or drives furiously any cattle.

Obstruction.—Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden, standing for hire in any place appointed for that purpose by the commissioners, or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal *or other means* (*z*), wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare.

Timber carts, etc.—Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage without having sufficient means for safely guiding the same.

Riding, etc., on footway.—Every person who leads or rides any horse or other animal, or draws or drives any cart, carriage (*a*), sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway.

Projections, etc.—Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing place, stool, bench, stall, or show-board on any footway, or who places any blind, shade, covering, awning, or other projection over

(*x*) See title "HIGHWAYS," *ante*.

(*y*) A bicycle was declared to be a carriage under s. 78 of the Highway Act, 1835 (*Taylor* v. *Goodwin* (1879), 4 Q. B. D. 228; 43 J. P. 653; 27 W. R. 489). And see now s. 85 of the Local Government Act, 1888, by which bicycles, velocipedes, and other similar vehicles are declared to be carriages for the purposes of the Highway Acts.

(*z*) In *R.* v. *Long and Others* (1888), 52 J. P. 630, the Queen's Bench Division quashed a conviction against persons charged with obstruction by walking three abreast on pavement, but the decision does not extend to the Highway Act, 1835, which contains a general clause (s. 72) providing for persons who "in any way wilfully obstruct the free passage of any highway."

(*a*) It would seem from BYLES', J., instructions to the jury in *R.* v. *Matthias* (1861), 2 F. & F. 570, that a perambulator is not a carriage.

or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground.

Every person who places, hangs up, or otherwise exposes to sale (*b*) any goods, wares, merchandise, matter or thing whatsoever, so that the same project into or over any footway or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway.

Rolling hoops, casks, etc.—Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway.

Hanging clothes.—Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon.

Prostitutes.—Every common prostitute or night-walker loitering and importuning passengers for the purpose of prostitution (*c*).

Exposing person.—Every person who wilfully and indecently exposes his person (*d*).

Obscene prints, etc.—Every person who publicly offers for sale or distribution, or exhibits to public view any profane, indecent (*e*), or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language.

Fireworks.—Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework (*f*).

Ringing bells.—Every person who wilfully and wantonly disturbs any inhabitant by pulling or ringing any door-bell, or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp.

Kites, slides, etc.—Every person who flies any kite, or who makes or uses any slide upon ice or snow.

Cleansing casks, etc.—Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime.

Shooting rubbish, etc.—Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so enclosed as to prevent mischief to passengers).

Beating carpets, mats, etc.—Every person who beats or shakes any carpet, rug, or mat (except door mats beaten or shaken before the hour of eight in the morning).

(*b*) *R.* v. *Wigan* (1879), 43 J. P. 220. In *Whittaker* v. *Rhodes* (1881), 46 J. P. 182, a draper prosecuted (under local Act) for exposing goods on a grid outside shop unsuccessfully set up a claim of right as owner of soil and as "custom" for thirty years.

(*c*) See also title "VAGRANTS," *post*.

(*d*) The offence under this section is complete without "intent to insult a female," as under Vagrancy Act, 1824. See title "VAGRANTS," *post*.

(*e*) See Indecent Advertisements Act, 1889, *ante*.

(*f*) See "EXPLOSIVES ACT, 1875," *ante*; also 39 J. P. 564.

Flower-pots.—Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down.

Throwing from roof.—Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger.

Cleaning windows, etc.—Every occupier of any house or other building, or other person, who orders or permits any person in his service to stand on the sill of any window in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story.

Vault or cellar unprotected.—Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto.

Throwing off offensive matter. Every person who throws or lays any dirt, litter, or ashes, or night-soil, or any carrion, fish, offal, or rubbish on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street: Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases.

Pigstyes.—Every person who keeps any pigstye (*g*) to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street so as to be a common nuisance.

SECTIONS 29, 31, 34, 35, 36.

Drunkenness (*h*).—Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station-house, within the limits of the special Act, shall be liable to a penalty not exceeding 40*s.* for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days (s. 29).

Fires.—Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding £5: Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony (s. 30).

If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is

(*g*) See Public Health Act, *ante*.
(*h*) See titles "LICENSING LAWS" and "DRUNKENNESS," *ante*.

situated shall be liable to a penalty not exceeding 10*s.*: Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in no wise owing to omission, neglect, or carelessness of himself or servant (s. 31).

Harbouring constable.—Every victualler or keeper of any public-house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public-house or place wherein he carries on his business, any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall, for every such offence, be liable to a penalty not exceeding 20*s.* (s. 34).

Harbouring thieves, etc.—Every person keeping any house, shop, room, or other place of public resort (*i*), within the limits of the special Act, for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises, shall, for every such offence, be liable to a penalty not exceeding £5 (s. 35).

Baiting animals.—Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place, for the purpose of fighting, baiting, or worrying any animals shall be liable to a penalty of not more than £5, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a term not exceeding one month; and the commissioners may, by order in writing, authorise the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty not exceeding 5*s.*: and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned (s. 36).

Sections 45—64.

Hackney carriages.—Proprietors and drivers of hackney carriages (*k*), are liable to penalties for certain offences:

Plying for hire (*l*) without a licence; proprietors neglecting to retain licence of drivers when in their employ, or failing to produce the same

(*i*) A public-house is a place of public resort (*Cole* v. *Coulton* (1860) 29 L. J. 125).

(*k*) A hackney carriage must be deemed to mean a carriage offered for hire to the public, whether standing in a public street or in a private railway yard (*Bateson* v. *Oddy* (1874), 43 L. J. 131).

(*l*) As to what is plying for hire and carriages standing at railway stations, see *Case* v. *Storey* (1868), 38 L. J. 115; and for concise collection of cases, see Treat. 48 J. P. 451. A *station yard* is a *private place*, and persons not authorised to ply for hire there may be convicted of trespassing under Railway Regulations Act, 1840. See Treat. 60 J. P. 643.

when summoned before justices; neglecting or refusing to carry the prescribed number of passengers as indicated on carriage; refusing to drive without reasonable excuse (*m*); demanding more than the sum agreed for, though less than the legal fare; drivers exacting more than the proper fare (s. 55); leaving carriages unattended at places of public resort (*n*); improperly standing with carriage, obstructing any other driver, or depriving him of his fare (ss. 45—64).

Offences by hirer.—Refusing to pay proper fare (*o*) (s. 66); injuring carriage, etc.

SECTION 69.

Bathing.—The local authority can make byelaws for regulating the manner in which bathing-machines may be used for preventing indecent exposure, the distances at which boat shall be kept from bathers, and the charges to be made for use of machines.

Byelaws.—The Towns Improvement Clauses Act, 1847, with respect to byelaws is incorporated; as to the publication of such byelaws, see s. 205 of that statute.

Procedure (*Jurisdiction*).—The proceedings for the recovery of penalties will be the same as under the Towns Improvement Clauses Act, 1847, *ante*. Under some of the sections one justice may commit, but where the procedure is under the Public Health Act, 1875, the hearing and conviction must be before two justices, and the authority to prosecute can only be delegated under s. 259 of that Act to an officer of the sanitary authority, and not to a constable when he is not such an officer. See *Kyle* v. *Barbor*, *ante*. When the conviction is by one justice, the sum adjudged to be paid must not exceed 20*s*., and the imprisonment must not exceed fourteen days.

POLICE PROCEDURE.

The Home Secretary has advised (see subjoined Circular Letter, May 19th, 1893) that in view of s. 253 of the Public Health Act, 1875, only an officer of the urban sanitary authority can prosecute for offences *other than those in s.* 25 of the Town Police Clauses Act, 1847, but *the case is different as regards s.* 28, as the power to any constable to apprehend implies a general authority to inform, and the decision in the case of *Kyle* v. *Barbor* (which was a decision under a local Act where there was no such provision) is not applicable (58 J P. 483).

(*m*) It was held that a cabman could not refuse to take a passenger to his own house or to any place he was ordered to go. See *Clark* v. *Stanford* (1871), 40 L. J. 151.

(*n*) A constable may drive the carriage and horse to a place of safety. Cabmen's shelters may be provided (s. 40) if Public Health Acts Amendment Act, 1890, be adopted.

(*o*) The fare, though recoverable as a *penalty*, is really only a *debt*.

[COPY OF CIRCULAR LETTER REFERRED TO.]

Home Office, Whitehall,
May 19th, 1893.

SIR,

I have laid before the Secretary of State your letter of the 4th inst. asking that the standing joint committee of the county of Chester may be furnished with his opinion upon the powers of the police to enforce in urban sanitary districts of the county the sections of the Town Police Clauses Act, 1847, which are by section 171 of the Public Health Act, 1875, incorporated in that Act.

In reply, I am to say for the information of the committee that as regards the provisions of the Town Police Clauses Act other than those in section 28, the Secretary of State is advised that in view of section 253 of the Public Health Act, 1875, only an officer of the urban sanitary authority can prosecute.

The case is different as regards section 28, where it is provided (including the amendment in section 171 of the Public Health Act) that any constable or officer of police acting in and for the district of any urban sanitary authority shall take into custody without warrant and forthwith convey before a justice any person who within his view commits any such offence. As the conveyance before a justice implies a general authority to inform, it appears to the Secretary of State that there must be an exception to section 253 of the Public Health Act so as to enable the police to prosecute for offences under section 28.

The decision in the case of *Kyle* v. *Barber*, to which you refer in your letter, was a decision under a local Act, where there was no such provision as that quoted above, and it is clear that that case does not decide that the police cannot prosecute for offences under section 28 of the Town Police Clauses Act, 1847.

I am, Sir, your obedient servant,
(Signed) E. LEIGH PEMBERTON.

The Clerk to the Standing Joint
Committee for the County of Chester.

TRADE UNIONS.

The law as to trade unions was amended by the Trade Union Acts, 1871, and 1876.

Trade unions are not unlawful by reason merely that they are in restraint of trade.

An important alteration as to definition of "trade unions" is made by s. 16 of Act of 1876. See also title "INTIMIDATION," *ante*.

TRAINING AND DRILLING.

Meetings of persons for the purpose of training or drilling to use arms, or practising military exercises without lawful authority, are prohibited, and offenders are liable to fine and imprisonment.

Persons present at such meetings for the purpose of training others are liable to penal servitude for seven years (60 Geo. 3, c. 1).

TRAMWAYS.

The Tramways Act, 1870 (33 & 34 Vict. c. 78), regulates the construction and working of tramways.

By s. 50, any person who wilfully places any stones, dirt, wood, or refuse, or other material, on any part of a tramway, or who does, or causes to be done, anything in such manner as to obstruct any carriage using a tramway, or knowingly aids or assists in the doing of any such thing, is liable to a penalty of £5, in addition to any other proceedings. The Act empowers local authorities to make byelaws regarding rate of speed, distance to be observed between cars, stopping places, etc.

TREASON.

High treason.—25 Edw. 3, st. 5, c. 2, deals with the crime of treason. This Act has been extended by 36 Geo. 3, c. 7, and 11 & 12 Vict. c. 12 (Treason Felony Act, 1848).

By s. 2 of the Treason Act, 1842, it is a high misdemeanor to discharge any gun, etc., or to throw at or near the person of the Sovereign any substance, etc.

By s. 3 of the Treason Felony Act, 1848, it is treason felony to compass or intend to depose, etc., or to levy war, against the Sovereign.

Misprision of treason.—Every one who knows that any other person has committed high treason, and does not within a reasonable time give information thereof, is guilty of "misprision of treason," and is liable to imprisonment for life. See also title "SEDITION OR TREASON FELONY," *ante*.

TREASURE TROVE.

Treasure trove, or treasure found, is where any money or coin, gold, silver, plate, or bullion is found hidden in the earth or other private place, the owner thereof being unknown, in which case the treasure belongs to the King, the finder receiving the full bullion value from the Lords Commissioners of the Treasury.

TRESPASS.

A mere entry on the land of another, provided it be not a forcible entry, is not a criminal offence, but one for which an action will lie and damages may be claimed; but refusal to leave on request may constitute conduct which may tend to provoke a breach of the peace.

Police assistance.—Where an occupier finds a person in his house who though he has perhaps entered peaceably, refuses to leave, there is nothing

to prevent the police aiding such occupier in the assertion of his civil rights by assisting the occupier in turning out the person improperly there, although such person is only a trespasser. But the constable should only act in the presence and at the express request of the lawful occupier, and he must satisfy himself that he can place reliance on the statement of the occupier as to the real facts of the case, otherwise he may find he is engaged in an unlawful transaction, and become liable to civil proceedings. The constable should himself use persuasion before laying hands on the person, and he should on no account arrest or detain him unless he has some other charge against him.

In cases such as the above the character of the intervention is not so much that of a police constable acting as a peace officer, but rather as a private person aiding the occupier, acting as his servant for the special purpose.

The greatest care is necessary in discriminating between cases such as above referred to and cases of real dispute as to right of possession, in which the police should not interfere.

As to "trespass in pursuit of game," see title "GAME," *ante*.

As to trespassing on railway lines, stations, etc., see title "RAILWAYS," *ante*.

As to malicious injury to property by trespass, see the Malicious Damage Act, 1861, ss. 51—53.

Regarding wilful and malicious trespass, s. 52 contains the following proviso :

"Provided, that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this Act had not passed." See also s. 53.

Claim of title or right.—The jurisdiction of the magistrates is not to be ousted by a mere fictitious pretence of title. Even where the defendant produces no evidence it is still for the justices to determine, from all the circumstances of the case, whether the party really acted under a fair claim of right. If he did, the complainant must resort to his civil remedy (*R.* v. *Edwards* (1856), 20 J. P. 68 ; *R.* v. *Cheshire JJ.* (1859), 23 J. P. 724).

The question was further considered in a case where the Court of Queen's Bench held that the special words of s. 52 qualify the ordinary restriction as to the jurisdiction of justices, and that jurisdiction is not ousted in cases of injury to property if they are satisfied that the defendant had unreasonably believed he was justified in doing the acts which caused the injury (*White* v. *Feast* (1872), L. R. 7 Q. B. 353 ; 36 J. P. 436 ; 26 L. T. 611).

TRUCK ACTS.

The Truck Act, 1831 (1 & 2 Will. 4, c. 37), is referred to under heading "EMPLOYERS AND WORKMEN." This Act is extended by the Truck Acts, 1887 and 1896.

The Act of 1896 permits no fine or deduction which is not either under written or specific contract with the workmen or under implied contract by keeping notices constantly affixed in places easily seen and read by workmen, detailing the maximum amount of the fine or deduction, the act or omission for which it may be imposed, and other particulars.

A Workmen's Compensation Act was passed in 1897.

UNIFORMS ACT, 1894.

By the Uniforms Act, 1894, any person wearing a military uniform without authority is liable to fine, with exception of—

(a) members of a band in recognised uniform at passing of Act (August 25th, 1894), unless such uniform exactly imitates a military uniform ;

(b) persons wearing uniform in course of stage plays, music hall or circus performances, or in any bonâ fide military representation.

A person not serving in his Majesty's naval or military forces wearing any such uniform or employing others to do so in a manner likely to bring contempt on the uniform, is liable to fine, £10, or imprisonment, one month.

VACCINATION ACTS.

(30 & 31 VICT. c. 84 (1867) ; 61 & 62 VICT. c. 49 (1898)).

The Vaccination Act, 1898, requires that the parent, or other person having the charge of any child, shall have it vaccinated within six months of its birth (s. 1).

Penalty for neglect, 20s. (Vaccination Act, 1867, s. 29).

Where neglect is shown, a justice may make an order directing vaccination ; penalty for disobedience of order, 20s. (s. 31).

Any person who shall attempt, etc., to produce by inoculation with variolous matter the disease of smallpox in any person shall be liable to imprisonment, one month (s. 32).

Exemption.—No person shall be liable to any penalty under s. 29 or s. 31 of the Act of 1867, if within four months from the birth of the child he satisfies two justices in petty sessions that he conscientiously believes that vaccination would be prejudicial to the health of the child (Act of 1898, s. 2). As to observations of ALVERSTONE, L.C.J., thereon, see 68 J. P. N. 438.

VAGRANTS.

The Vagrancy Act, 1824, divides vagrants into three classes:

(1) Idle and disorderly persons;

(2) Rogues and vagabonds;

(3) Incorrigible rogues;

but such distinction need not necessarily be observed when proceeding against persons for offences against the vagrancy laws.

(1) "Idle and disorderly persons" include persons leaving families chargeable; persons fraudulently applying for relief; persons being chargeable to parish from which they have legally been removed; unlicensed pedlars; prostitutes behaving riotously; persons begging alms.

(2) "Rogues and vagabonds."—Under this head are included persons pretending to tell fortunes; persons lodging in outhouses, etc.; persons exhibiting obscene pictures, etc.; anyone indecently exposing person; exposing wounds, etc.; persons fraudulently collecting alms; any person running away and leaving family chargeable; persons gaming in public places; persons found in possession of housebreaking implements, or armed with offensive weapon, etc., or found on premises for unlawful purposes; reputed thieves; persons resisting police; persons convicted a second time as "idle and disorderly."

(3) "Incorrigible rogues."—Every person convicted for the second time as a rogue and vagabond, or person violently resisting police so apprehending him; vagrants breaking out of confinement. *Re* punishment, see p. 421.

1. Idle and Disorderly Persons.

Persons committing the following offences can be punished as idle and disorderly persons:

Neglecting to maintain family (*p*).—All persons able wholly or in part to maintain themselves or their families, either by work or other means, and wilfully refusing or neglecting so to do (*q*), by

(*p*) A woman is punishable under the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 6, for neglecting to maintain bastard child.

(*q*) Any man capable of maintaining his family by work, and who neglects or refuses so to do, is an idle and disorderly person, and it is not necessary to show that he was an idle person who refused work. See *Carpenter* v. *Stanley* (1868), 33 J. P. 37. By 13 & 14 Vict. c. 101, s. 5, an order for maintenance of wife may be made upon the husband should she become chargeable on account of her lunacy. If a wife

which refusal they or their families shall become chargeable to any parish, township, or place (s. 3).

Fraudulently applying for relief.—Persons applying for relief at any workhouse, or to any relieving officer or overseer, having at the time in their possession or under their control any property of which, on inquiry, they shall not make a full and complete disclosure (11 & 12 Vict. c. 110, s. 10). Paupers who wilfully give false name or make false statement for the purpose of obtaining relief (34 & 35 Vict. c. 108, s. 7). Extended by 39 & 40 Vict. c. 61, s. 44, to any person who shall obtain relief by giving a false answer or making a false statement, and further extended by 45 & 46 Vict. c. 36, s. 5, to any person who, for the purpose of obtaining relief from the rates raised for the relief of the poor, by himself or any other person wilfully gives a false answer or makes or uses a false statement to the guardians of any union or any of their officers.

Persons becoming chargeable.—All persons who return to or become chargeable to any parish, township, or place from which they have been legally removed by order of two justices, unless they produce a certificate of the churchwardens and overseers of some other parish, township, or place acknowledging them to be settled there.

Pedlars.—All petty chapmen or pedlars, who wander (*r*) abroad and trade, not being licensed or otherwise authorised by law (s. 3).

Prostitutes.—Also common prostitutes wandering in the public streets, public highway, or in any place of public resort, and behaving in a riotous or indecent manner (s. 3).

Beggars.—And any person (*s*) wandering abroad, or placing himself or herself in any public place, highway, court, or passage,

refuses to live with her husband, he cannot be punished for neglecting to maintain her, and no past cruelty on his part can be urged in justification for her refusing to live with him. The evidence of the wife on a charge of neglecting to maintain her cannot be received against the husband. A constable is not justified in apprehending without a warrant a man whose wife is chargeable to the parish.

(*r*) See title "Pedlars," *ante*.

(*s*) Persons seeking assistance under exceptional circumstances, provided that it is not their habit or mode of life and that the begging is not for an unlawful object or done disorderly, are not vagrants within this section (*Pointon* v. *Hill* (1884), 12 Q. B. D. 306; 48 J. P. 342; 53 L. J. 62). As to collecting boxes in streets for charitable purposes, see 60 J. P. 460.

to beg or gather alms, or causing or procuring any child or children so to do (s. 3).

Punishment.—Such persons are punishable by commitment by one justice for fourteen days, or by two justices (in petty sessions) for one month; a fine may be imposed in lieu of imprisonment (S. J. Act, 1879, s. 20).

2. ROGUES AND VAGABONDS.

The following are offences under s. 4 of Act. Offenders can be punished as rogues and vagabonds:

Fortune-telling.—Any person who pretends or professes to tell fortunes or uses any subtle craft, means, or device, by palmistry or otherwise (*t*), to deceive or impose on any of his Majesty's subjects.

Lodging out.—Every person wandering abroad and lodging in any barn or outhouse or unoccupied building, in the open air or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself.

Indecent exhibitions.—Persons who wilfully expose (*u*) to view in any street or public place (*x*), or in any building situate in any street or public place, any obscene print or other indecent exhibition.

Exposing person.—Any person who wilfully, openly, and obscenely exposes his person in any street or public highway, or in view thereof, or in any place of public resort, with intent to insult any female (*y*).

Exposing wounds.—Any person who wanders abroad and endeavours to obtain alms by the exposing of wounds or deformities.

Collecting alms.—Every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind under any false or fraudulent pretence.

Running away leaving family chargeable.—Every person running away and leaving wife or his or her children chargeable to any parish, or by 12 & 13 Vict. c. 103, s. 3, to the common fund of the union (*z*).

(*t*) See title "PALMISTRY," *ante*. Regarding "Spiritualists," see *Monck* v. *Hilton* (1877), 41 J. P. 214. In *Johnson* v. *Fenner* (1869), 33 J. P. 740, it was held that the device must be *ejusdem generis* with palmistry, but in *Re Slade* (1877), 36 L. T. 402, it was held that the words "or otherwise" are distinct from the previous general words. As to "Astrologists," see *Penny* v. *Hanson* (1887), 56 L. J. 41; 51 J. P. 167.

(*u*) The Carmarthenshire Quarter Sessions held that writing obscene words on a gate in a public highway was not within this section (*Thomas* v. *Bradbury* (1883), 47 J. P. 505).

(*x*) Public urinal is a public place (*R.* v. *Harris* (1871), 21 L. T. 74).

(*y*) See also "TOWN POLICE CLAUSES ACTS," *ante*.

(*z*) Proceedings may be taken any time within two years after offence (*Reere* v. *Yeates* (1862), 31 L. J. 241). A warrant may be issued on

Gaming in public place, etc.—Every person playing or betting in any street, road, highway, or other open and public place (*a*) at or with any table or instrument of gaming at any game or pretended game of chance, is to be deemed a rogue and vagabond.

[*Amendment Act* (36 & 37 Vict. c. 38, s. 3).—Every person playing, or betting by way of wagering, or gaming in any street, road, highway, or other open and public place (*b*), or in any open place to which the public have or are permitted to have access, at or with any table or instrument of gaming (*c*), or any coin, card, token, or other article used as an instrument of such wagering, or gaming at any game or pretended game of chance, is to be deemed a rogue and vagabond, and may be punished under 5 Geo. 4, c. 83, or if the justices think fit, in lieu of such punishment, by a penalty for the first offence not exceeding 40*s*., and for any subsequent offence not exceeding £5.]

[*For recovery of penalty, see* 11 *&* 12 *Vict. c.* 43, *s.* 22, *and* 42 *&* 43 *Vict. c.* 49 (*Summary Jurisdiction Acts*), *post*.]

NOTE.—This statute in effect repeals the enactment contained in 5 Geo. 4, c. 83, and substitutes the above clause for it. The offence can only be committed in such places as the public have or are permitted to have access to.

Possession of picklocks, keys, etc.—All persons who have in their custody or possession any picklock, key, crow, jack, bit, or other implement with intent feloniously to break into any dwelling-house, warehouse, stable, or outbuilding.

Armed with offensive weapon.—Every person being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act. See also Larceny Act, 1861, s. 58, *post*.

Found on premises.—Every person found in or upon any dwelling-house, warehouse, stable, or outhouse, or in any inclosed yard, garden, or area for any unlawful purpose.

The "unlawful purpose" must be the intention to commit some offence which if committed would render the person liable to a criminal prosecution. If the crime has been committed a summary conviction will be

information of relieving officer, stating that relief has been applied for and he believes parent has absconded (39 & 40 Vict. c. 61, s. 19).

(*a*) A railway carriage in transit is a public place (*Langrish* v. *Archer* (1882), 47 J. P. 295; 52 L. J. 47).

(*b*) The question arose in *Ex parte Freestone* ((1856), 25 L. J. 121), Whether a railway is a public place or not? POLLOCK, C.B., intimated his opinion that a railway was a public place. See also *Ex parte Davis* (1857), 21 J. P. 280.

(*c*) See *Dyson* v. *Mason* (1889), 53 J. P. 262.

The Home Secretary, September, 1895, refused to interfere with a conviction for playing the "stick and button" trick (59 J. P. 668).

The recorder of Scarborough held on appeal that a betting book is not "an instrument of gaming" (48 J. P. 457).

irregular, as the misdemeanor merges in the felony. It is not necessary that the "unlawful purpose" should mean the intention to commit crime at the time or place where the person is found; but if the information states that the unlawful purpose was to commit a felony, the justices must find that such was the purpose.

Suspected persons.—Every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock, quay, warehouse, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, or any highway, or any place adjacent thereto, with intent to commit a felony. See also 34 & 35 Vict. c. 112, s. 15.

Second conviction.—Every person committing any of the offences for which the offender is to be deemed an idle and disorderly person, and who has been previously convicted of such offence.

Resisting.—Also every person apprehended as an idle and disorderly person, and violently resisting any constable or other police officer so apprehending him or her, and being subsequently convicted of the offence, is to be deemed a rogue and vagabond.

Punishment.—Commitment by one justice for not exceeding fourteen days, or by two justices (in petty sessions) for three months (s. 4). Modified by s. 40 of the S. J. Act, 1879; and by s. 4 as to fine. Also by s. 22, Act of 1848.

3. INCORRIGIBLE ROGUES.

An incorrigible rogue is a person who has been previously convicted as a rogue and a vagabond, or who violently resists any constable apprehending him for being a rogue and vagabond, and convicted as such; or who breaks or escapes out of any place of legal confinement before the expiration of the sentence passed on him for being a rogue and vagabond (s. 5).

Punishment.—Any person convicted of any such offence may be committed with hard labour until the next quarter sessions.

Further punishment of incorrigible rogues.—When any incorrigible rogue shall have been so committed, it shall be lawful for the justices at quarter sessions to order that such offender shall be further imprisoned with hard labour for not exceeding one year, with liability (if a male) to be whipped (s. 10 of Act).

PROCEDURE.

The parish officers or assistant overseer may make the complaint, and a justice may grant a warrant against any offender (s. 6).

Any person may apprehend without a warrant any one found offending against this Act (s. 11) : but the person must be "found offending" or doing some specific Act (*d*).

Search warrant.—Upon information on oath that any person described in the Act either as an idle and disorderly person, a rogue and vagabond, or an incorrigible rogue, is, or is suspected to be, concealed in any house kept for the lodging of travellers, a justice may by warrant authorise any person to enter such house at any time and arrest such person, to be dealt with according to law (s. 13).

Effects of offenders.—Expenses.—Any money found upon or in the possession of any offender may be applied towards the expense of arrest, conveyance to gaol, and maintenance therein, or the justices may order the effects of the offender to be sold and the proceeds so applied (s. 8).

Appeal.—Appeal lies to the quarter sessions (s. 14).

LIABILITY, ETC., OF CONSTABLE.

A constable neglecting his duty, under the Vagrancy Act, 1824, is liable to a penalty of £5, and any one who shall disturb or hinder a constable in execution of his duty can be prosecuted.

RELIEF OF VAGRANTS.

Members of the constabulary are frequently appointed assistant relieving officers of vagrants.

The Poor Law Amendment Act, 1848, enacts that any person applying for relief who does not, when required by the guardians, their officers, or the overseers, make complete and correct disclosure of the money or other property in his possession and under his immediate control, is declared to be "idle and disorderly" within the meaning of the Vagrancy Act, 1824, and is liable to be dealt with as such.

The following is a copy of a Minute of the Poor Law Board :

"With respect to the applicants that will come before him, the relieving officer will have to exercise his judgment as to the truth of their assertions of destitution, and to ascertain by searching them whether they possess any means of supplying their own necessities. He will not be likely to err in

(*d*) Hence it has been held that a constable is not justified in arresting without a warrant a man charged with neglecting to maintain his family (*Horley* v. *Rogers* (1860), 29 L. J. 140). In such a case the constable should have the warrant in his possession at the time of the arrest. See *Codd* v. *Cube* (1876), 40 J. P. 506 ; 45 L. J. 101 ; *Galliard* v. *Laxton* (1862), 31 L. J. 123.

judging from their appearance whether they are suffering from want of food. He will take care that women and children, the old and infirm, and those who, without absolute serious disease, present an enfeebled or sickly appearance, are supplied with necessary food and shelter. As a general rule, he would be right in refusing relief to able-bodied and healthy men, though in inclement weather he might afford them shelter, if really destitute of the means of procuring it for themselves. His duties would necessarily make him acquainted with the persons of the habitual vagrants, and to these it would be his duty to refuse relief except in case of evident and urgent necessity."

VAGRANCY ACT, 1898.

(61 & 62 VICT. C. 39.)

Persons trading in prostitution.—Every male person who (a) knowingly lives wholly or in part on the earnings of prostitution; or (b) in any public place persistently solicits or importunes for immoral purposes, shall be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and may be dealt with accordingly.

If it is made to appear to a court of summary jurisdiction by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution, and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the court may issue a warrant authorising any constable to enter and search the house and to arrest that male person.

Where a male person is proved to live with or to be habitually in the company of a prostitute and has no visible means of subsistence, he shall, unless he can satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

VERMINOUS PERSONS.

The Cleansing of Persons Act, 1897, permits local authorities to provide cleansing and disinfection for persons infested with vermin.

VEXATIOUS INDICTMENTS ACT, 1859.

(22 & 23 VICT. C. 17.)

The Act requires that no indictment be preferred for perjury, subornation of perjury, conspiracy, obtaining money or goods by false pretences, keeping a gambling or disorderly house, and indecent assault, or for offences under the Criminal Law Amendment Act, 1885, unless the prosecution has been bound over to prosecute or give evidence, or unless the accused shall have been committed to or detained in custody or has been bound over to answer an indictment for such offence, or unless the consent of a judge or the Attorney-General be obtained.

WARRANTS

See CONSTABLES, Chap. IV., pp. 99—103, *ante*.

WEIGHTS AND MEASURES.

The Weights and Measures Act, 1878, repealed all previous Acts relating to weights and measures. The object of the Act is to enforce *uniformity* of weights and measures; it does not prevent sales (*e*) otherwise than by weight and measure. The principal Act (1878) has been substantially amended by the Act of 1889.

The use of weights and measures of the metric system is legalised by the Act of 1897 (60 & 61 Vict. c. 46) (*f*).

The Weights and Measures Act of 1889 deals with weighing machines and instruments, and provides for the sale of coal by weight.

The Weights and Measures Act, 1904, further amends the law.

Under the Act of 1878 all weights and measures used for trading purposes must be stamped with stamp of verification by an inspector (*g*) appointed under the Act, and if not so stamped the person using same shall be guilty of an offence (ss. 28, 29).

The local authorities (*h*) are required to carry out the provisions of the Act within their jurisdictions and to fix the times and places at which each inspector appointed by them is to attend for the purpose of the verification (*i*) of weights and measures (s. 44).

(*e*) See 48 J. P. 115.

(*f*) Acts were also passed in 1892 and 1893 relative to expenses, purchase of franchises, etc., in counties and boroughs, and are important.

(*g*) Persons appointed inspectors are required by the Board of Trade to pass an examination in arithmetic, elementary mechanics, and physics, as well as in practical work. Inquiries can be addressed to Superintendent of Weights and Measures, 7, Old Palace Yard, Westminster, S.W.

An inspector appointed after January 1st, 1890, is not to act unless and until he has passed the required examination, but a person appointed inspector may lay an information for the recovery of fines although uncertificated, such fines being recoverable on prosecution of any member of the public (*Crabtree* v. *Bullman* (1896), 60 J. P. 489). The inspector is not to be a seller, maker, or adjuster of weights, etc. (s. 12 of Act).

(*h*) By s. 3 of the Local Government Act, 1888, the execution as local authority of the Act in a county has been transferred to the county council. As to powers of local authority to make byelaws and incur expenses, see ss. 51 and 53 of Act.

(*i*) A weight (provided it is a copy of a Board of Trade standard) can only be considered an illegal weight when it is found to be *false or unjust*,

The inspector should subsequently during the year visit at uncertain periods the towns and villages in his district as he considers occasion requires, and under the authority of his warrant enter shops, warehouses, etc., and *inspect* all scales, weights and measures, etc., kept there for trading purposes, noticing whether they are correct, and bear stamp of verification (*k*).

The inspector is usually responsible for the safe custody of the local standards of weights and measures, which should be carefully conveyed on all occasions when taken through district. As to powers and qualifications of officer, see ss. 48 and 49 of Act.

Denomination.—Weights must have the denomination marked thereon in legible figures and letters. These should be cast or engraved on the weights (s. 70), and not inserted on plugs or plates. The denomination must be legibly marked on all measures of capacity (s. 28).

Vessels which are represented to contain any quantity (*l*) of imperial measure, and which are used as measures, must have the denomination and stamp of verification stamped thereon (s. 29).

Unauthorised weights, etc.—The use of unauthorised weights or measures renders the user liable to penalties. See s. 24 of Act.

"Forfeited" weights.—All weights, measures, scales, balances, etc., forfeited under Act are to be broken up, the materials to be sold or disposed of as a court of summary jurisdiction may direct (s. 57).

"Possession," evidence of.—Weights and measures and weighing instruments found on premises are held to be there for the purposes of trade and in the possession of the owner of such premises till the contrary is proved (s. 59).

or when *not stamped* with the inspector's stamp of verification: and it is to be noticed that an old stamp of verification must be recognised, although the mark may have become almost obliterated by use (*Starr* v. *Stringer* (1872), L. R. 7 C. P. 383; 26 L. T. 735).

A four bushel measure known as "a multiple of a bushel" was legalised after the passing of the Act of 1878, and a three gallon measure was introduced in 1889 (Order in Council, November 22nd, 1890).

(*k*) An inspector stamping weights and measures of a person residing out of his district is liable to a fine of £20 for every weight, etc. See s. 23 of Act; but see now s. 12, Act of 1904.

(*l*) A churn fitted with a gauge to indicate number of gallons was found to be a measure for use for trade (*Harris* v. *London County Council*, [1895] 1 Q. B. 240).

ANALYSIS OF ACT OF 1878.
(41 & 42 VICT. C. 49.)

Uniformity. The same weights and measures shall be used throughout the United Kingdom (s. 3).

Standards.—Sections 4–7 describe the imperial standards, also the "parliamentary copies" of same, and the powers of the Board of Trade to restore the standards if lost or defaced. As to verification of local standards, see s. 41.

Measure of length.—For definition of measures of length, *e.g.*, inch, foot, yard, fathom, pole, chain, furlong, mile, see ss. 10—12.

Measures of weight and capacity.—Sections 13—15 define the imperial pound, ounce, dram, 14 pounds, 28 pounds, and 56 pounds, hundredweight, ton, also the gallon, quart, pint, peck, bushel (*m*).

Trade.—All sales by weight or measure must be made according to one of the imperial weights or measures ascertained by this Act, or to some multiple or part thereof (s. 19).

No local or customary measure nor use of heaped measure shall be lawful. Any person who sells by any other than one of the imperial measures shall be liable to a fine of 40*s.* for any such sale.

Avoirdupois weight.—All articles sold by weight shall be sold by avoirdupois weight. Except that—

(1) Gold and silver and articles made thereof, gold and silver thread, lace, or fringe, platinum and other precious metals, diamonds, and precious stones may be sold by the ounce troy (*n*), or by decimal parts of it.

(2) Drugs, when sold by retail, may be sold by apothecaries' weight (s. 20).

Sale of article in vessel not represented as being an imperial or local measure.—Nothing in this Act shall prevent the sale, or subject a person to a fine for the sale of an article in any vessel which is not represented (*o*) as containing any amount of imperial measure, nor subject a person to a fine under this Act for the possession of a vessel where it is shown that such vessel is not used nor intended for use as a measure (s. 22).

Printing returns, price lists, etc.—Any person who prints or makes any return, price list, price current, or any journal in which the denomination of weights and measures quoted denotes a greater or less weight or measure than is denoted by the same denomination of the imperial weights and measures, shall be liable to a fine not exceeding 10*s.* for every copy of such (s. 23).

(*m*) As to "multiple of a bushel," see note (*i*), *ante*.

(*n*) "Ounce troy" is defined in s. 14 to consist of 480 grains, and the Board of Trade standards of apothecaries' weights and measures are set forth in Schedule which appeared in the London Gazette of August 15th, 1879.

(*o*) The vexed question of the lawfulness of selling beer by an undefined measure described as a "glass" appears to have been authoritatively settled in Scotland in favour of the sellers (*Craig* v. *McPhee* (1884), 51 J. P. 323).

Possession of unauthorised weights or measures.—Any person using, or having in his possession for use for trade, any weight or measure not being of the same denomination as some Board of Trade standard. Penalty, fine not exceeding £5, or for a second offence £10, and the weight or measure will be liable to be forfeited (s. 24).

Unjust weights and measures.—Every person using, or having in his possession for trade purposes, any weight, measure, or weighing instrument which is false or unjust, is liable to a fine not exceeding £5, and on a second offence £20, and any contract, bargain, sale, or dealing made by the same will be void, and the weight, measure, or weighing instrument will be liable to be forfeited (*p*) (s. 25).

Fraudulent use of weights, measures, etc.—Where any fraud is wilfully committed in the using of any weight, measure, or weighing (*q*) instrument, the person committing such fraud, and every person party to the fraud, is liable to a fine not exceeding £5, and for a second offence £20, and the weight, etc., to be forfeited (s. 26).

Sale of false weights, etc.—Any person wilfully making or selling a false weight, measure, scale, balance, steel-yard, or weighing machine—penalty not exceeding £10, and for a second offence £50 (s. 27).

STAMPING AND VERIFICATION.

Denomination.—Every weight, except where the small size of the weights renders it impracticable, shall have the denomination stamped on the top or side in legible figures and letters, and every measure of capacity (*r*) on the outside. A weight or measure not in conformity with this section, *i.e.*, which is not so stamped with its denomination, shall not be stamped with the stamp of verification defined in s. 29 (s. 28).

Verification.—All weights and measures used for trade must be verified (*s*) and stamped by an inspector with a stamp of verification under this Act. Every person who uses, or has in his possession for use for trade, any measure or weight not stamped as required by this section, shall be liable to a fine not exceeding £5, or for a second offence £10, and the weight or measure shall be liable to be forfeited, and the bargain, sale, etc., shall be void (s. 29).

"Cased" weights.—Weights made of lead or pewter, or any mixture thereof, are not to be stamped or used for trade (*t*) unless wholly and substantially cased with brass, copper, or iron, and stamped or marked "cased";

(*p*) As to disposal of forfeited weight, etc., see heading "'Forfeited' weights," *ante*.

(*q*) In *Stone* v. *Tyler* (1905), 69 J. P. 4, a conviction for "fraud wilfully committed," where an article (sugar) was weighed with the paper in which it was wrapped and sold as one pound of sugar, was held to be wrong (November 4th, 1904). See also *King* v. *Spencer* (1904), 68 J. P. 530, where tea was similarly so sold.

(*r*) See also s. 13 of Act of 1904, *post*, as to measures of "length."

(*s*) Every weighing instrument used for trade shall be verified and stamped by an inspector of weights and measures, with a stamp of verification under this Act. See s. 35 of Act of 1889.

(*t*) But see now Act of 1904, s. 6, *post*.

but nothing in this section is to prevent the insertion into a weight of such a plug of lead or pewter as is *bonâ fide* necessary for the purpose of (*u*) adjusting it, and of affixing thereon the stamp of verification—penalty not exceeding £5, second offence £10 (s. 30).

Coin weights must be stamped by the Board of Trade (s. 31).

Counterfeit stamps.—Any person who forges or counterfeits any stamp (*v*) used under this Act, or wilfully increases or diminishes a weight stamped under this Act—penalty £50; and any person who knowingly uses, sells, disposes of, or exposes for sale any measure or weight with such counterfeit stamp thereon, or a weight so increased or diminished, is liable to a fine not exceeding £10, such weights and measures to be forfeited (s. 32).

Board of Trade, powers of.—As to the custody and verification of the imperial standards, see ss. 33—36, and for verification by Board of Trade of local standards, see ss. 37, 41.

POWERS OF INSPECTOR.

Powers of inspector.—The local authority shall from time to time fix the times and places within their jurisdiction at which each inspector appointed by them is to attend for the purpose of the verification of weights and measures (*w*); and the inspector shall attend, with the local standards in his custody, at each time and place fixed, and shall examine every measure or weight which is of the same denomination as one of such standards, and is brought to him for the purpose of verification, and compare the same with that standard, and, if he finds the same correct, shall stamp it with a stamp of verification in such manner as best to prevent fraud (s. 44).

Every inspector (*x*) under this Act, when authorised in writing under the hand of a justice of the peace, also every justice of the peace, may at all reasonable times enter premises and inspect all weights, measures, and weighing instruments in use for trade within his district; and any person who neglects or refuses to produce for such inspection all weights, measures, and weighing instruments in his possession or on his premises, or refuses to permit the justice or inspector to examine the same, or obstructs the entry of the justice or inspector, is liable to a fine not exceeding £5, or for a second offence £10 (s. 48).

Breach of duty.—A penalty (£5) is imposed on inspectors for breach of duty or for misconduct under Act (s. 49).

(*u*) See also s. 6 of Act of 1904.

(*v*) This is extended by s. 10 of Act of 1904. See p. 432, *post*.

(*w*) Extended to weighing instruments by s. 12 of Act of 1904. See p. 432, *post*.

(*x*) See pp. 424, 425, *ante*.

BYELAWS, EXPENSES, ETC.

Local authorities, with the approval of the Board of Trade (*y*), may make byelaws regulating the local verification and stamping of weights, measures, and weighing instruments, and the duties of inspectors, and they have power to impose fines not exceeding 20*s.* for the breach of such byelaws (s. 53).

Expenses incurred by the local authority are to be paid out of the local rate (s. 51).

PROCEDURE.

Procedure.—Offences may be prosecuted and fines and forfeitures recovered on summary conviction before a petty sessional court of two or more justices or a stipendiary magistrate (ss. 56, 70).

As to disposal of forfeited weights, scales, etc., see s. 57 of Act.

Limitation for second offences.—No person shall be liable to an increased penalty for a second offence under any section of this Act unless the offence was committed after a conviction within five years previously for an offence under the same section (s. 58).

Evidence of possession.—Where any weight, measure, or weighing instrument is found in the possession of any person carrying on trade within the meaning of this Act, or on any premises which, whether a building or in the open air, whether open or enclosed, are used for trade within the meaning of this Act, such person or the owner of such premises shall, until the contrary is proved, be deemed to have such weight, measure, or weighing instrument in his possession for use for trade (s. 59).

Appeal from conviction.—See s. 60.

SCALES IN MARKETS, ETC.

By s. 64 and second part of Schedule 6, owners or managers of any public market in Great Britain where goods are exposed or kept for sale shall provide proper scales and balances, and weights and measures, or other machines for the purpose of weighing or measuring all goods sold, offered, or exposed for sale in any such market, and shall deposit the same at the office of the clerk or toll collector of such market, or some other convenient place, and shall have the accuracy of such measures, weights, or weighing instruments tested at least twice in every year by the inspector of weights or measures where the market is situate, and all expenses attending the purchase, adjusting and testing thereof, shall be paid out of the moneys collected out of the tolls in the market.

Goods sold in market, weighing of.—Such clerk or toll collector shall at all reasonable times, when called upon so to do, weigh or measure all goods which have been sold, offered, or exposed for sale in any such market, upon payment of such reasonable sum as may from time to time be decided upon by the said owners or managers, subject to the approval and revision of the justices in general or quarter sessions assembled. Fine not exceeding £5 (Schedule 6, part 2).

(*y*) These powers are greatly enlarged by the Act of 1904.

Goods sold in market deficient in weight.—Every clerk or toll collector of any public market in Great Britain at all reasonable times may weigh or measure all goods sold, offered, or exposed for sale in any such market; and if upon such weighing or measuring they are found deficient in weight or measure, or otherwise contrary to the provisions of this Act, such clerk or toll collector shall take the necessary proceedings for recovering any fine to which the person selling, offering, or exposing for sale, or causing to be sold, offered, or exposed for sale, such goods is liable; and the court convicting the offender may award out of the fine to such clerk or toll collector such reasonable remuneration as to the court seems fit. Penalty, not exceeding £5 (s. 64, Sched. 6, part 2).

WEIGHTS AND MEASURES ACT, 1889.
(52 & 53 VICT. C. 21.)

SALE OF COAL.

The Weights and Measures Act, 1889, provides that all coal shall be sold by weight only, except where by the written consent of the purchaser it is sold by boat load, or by waggons or tubs, delivered from the colliery into the works of the purchaser.

If any person sells coal otherwise than is required by this section he shall be liable to a fine not exceeding £5 for every such sale (s. 1). See also ss. 21—24 of Act.

Where a quantity of coal, exceeding 2 cwt., is delivered by means of any vehicle, before any part of the coal is unloaded a ticket in the prescribed form must be delivered or sent by the seller to the purchaser or his servant (*z*).

The seller is liable to a fine of £5 if no such ticket be delivered, or if the quantity of coal delivered be less than that mentioned on the ticket (*a*). The person attending the vehicle is liable to a fine of £5 if he has received such a ticket and refuses or neglects to deliver it to the purchaser, or to show it to an inspector when requested so to do (s. 21).

If any person in charge of a vehicle in which coal is being carried, wilfully makes any false statement as to the tare weight of the vehicle, or wilfully does any act by which either the seller or purchaser is defrauded, he is liable to a fine of £5 (s. 23).

Any seller or purchaser of coal, or person in charge of a vehicle in which coal is carried, inspector of weights and measures or other officer appointed for the purpose by the local authority, may require that any coal, or any vehicle used for the carriage of coal in bulk, be weighed or re-weighed by any weighing instrument stamped by an inspector of weights and measures (*b*) (s. 27).

(*z*) Where the ticket expresses that the purchaser will receive a specific quantity of coal in a specified number of sacks, each containing two cwt., no offence is committed if some or one of the sacks contain less than two cwt., provided the total amount be delivered (*Godfrey* v. *Radford* (1896), 60 J. P. 615).

(*a*) The merchant is made liable for the neglect of his servant (*Baker* v. *Herd* (1894), 58 J. P. 413).

(*b*) The section contains a proviso as to defrayment of expense incidental to weighing.

If any person obstructs any weighing or re-weighing authorised by s. 27 he shall be liable to a fine not exceeding £5, or for a second offence imprisonment may be inflicted.

An inspector has very wide powers with regard to entering any place where coal is kept for sale. He may stop any vehicle carrying coal for sale or delivery to a purchaser, and may weigh any coal found in course of delivery to a purchaser.

If the person in charge of the vehicle has no ticket, then the inspector should ascertain whether it was otherwise sent to the purchaser.

If the coal turn out of less weight than represented by the seller, he is liable to a fine of £5. Penalty for obstructing inspector, £5.

WEIGHTS AND MEASURES ACT, 1904.

(4 EDW. 7, C. 28.)

The Weights and Measures Act of 1904, which came into operation on January 1st, 1905, will not have full effect until the Board of Trade issue the regulations for the making of which power is given to them under s. 5 of the Act. The object of these regulations is evidently to make the verification and stamping of weights and measures uniform throughout the country. At present the law in this respect is mainly governed by s. 53 of the Act of 1878, and s. 9 of that of 1889. When the Board of Trade regulations come into force (*c*) these sections (and certain related provisions in ss. 30 and 43 of the Act of 1878) are to be repealed. See Schedule to Act of 1904.

Ss. 1—4.—Short title, construction, commencement, definitions, etc.

S. 5.—Powers of Board of Trade as to making "general regulations" for the guidance of local authorities with respect to verification and stamping, including among other matters the prohibition of stamping in cases where the nature, denomination, material, or principle of construction of the weight, measure, or instrument appears likely to facilitate the perpetration of fraud; and on the Board of Trade regulations coming into force, the enactments mentioned in Part I. of Schedule to Act shall be repealed.

S. 6.—Power of Board of Trade to grant certificates of suitability for use of appliances for trade purposes submitted to them by local authorities, manufacturers, or dealers, if upon examination the pattern submitted to them "is found not to be such as to facilitate the perpetration of fraud."

S. 7.—If any difference arises as to the meaning or construction of the regulations, such difference shall, on the request of either party (or by

(*c*) The Board of Trade in a Circular dated November 25th, 1904, notified that the regulations referred to would not be issued for some time, and intimated that it would be desirable "that such weights and measures and weighing instruments as possessed novel features in form or design which may come before the Board for examination and testing under s. 6, should not be stamped by local inspectors of weights and measures without a reference to the local authority who should consider whether it is necessary to obtain the opinion of the Board of Trade in accordance with s. 6 before the inspector proceeds to verify and stamp such appliance for use in trade."

direction of court), be determined by the Board of Trade, whose decision shall be final.

S. 8.—The Board of Trade are to provide for the holding of examinations for the purpose of ascertaining whether applicants for the post of inspector under a local authority nominated by that authority possess sufficient practical knowledge for the proper performance of the duties of inspectors of weights and measures.

S. 9.—Power by Order in Council to specify a new scale of fees for verification and stamping. When such scale comes into operation the enactment mentioned in Part II. of the Schedule to this Act shall be repealed.

S. 10.—Any person who removes a stamp from any weight or measure or weighing or measuring instrument and inserts the same into another weight or measure or weighing or measuring instrument shall be deemed to forge or counterfeit a stamp within the meaning of section thirty-two of the principal Act.

S. 11 amends the Bread Acts (*d*) and Fourth Schedule of Act of 1889.

S. 12 extends the provisions of s. 44 of Act of 1878 as to verification and stamping of weights and measures, to weighing instruments used for trade, and for the purposes of those provisions as so amended any person having his principal place of business within any district shall be deemed to reside in that district (*e*), although he in fact is not resident there.

S. 13 contains five verbal amendments of previous enactments.

The first of these (sub-s. (1)) is to the effect that every measure of length must have the denomination stamped thereon.

Sub-s. (2) amends s. 57, Act of 1878, as to payment of portion of fine to informer. The amendment adds the words "unless each informer is an inspector of weights and measures."

Sub-s. (3) amends s. 4 of Act of 1889 as to power to imprison in case of second or subsequent convictions. In future an offender may be sent to prison in "any" case where there is intent to defraud.

Sub-s. (4) amends s. 7 of Act of 1889 by enabling Board of Trade to require local authorities to provide for the use of their officers working standards of weight, measure, etc.

Sub-s. (5) amends s. 13 of Act of 1889 in regard to allowances or rebates from fees which may be made when verification or stamping is done on the premises of an earthenware or glass manufacturer.

S. 14.—An inspector of weights and measures may, with the consent of the local authority, prosecute before a court of summary jurisdiction or justices any information, complaint, proceeding, etc.

S. 15.—Section forty-five of the principal Act shall apply to weighing instruments (*f*) in like manner as it applies to weights and measures.

(*d*) The general effect of amendment seems to be that bread taken out for sale in a cart may be weighed by a weighing instrument instead of by a beam and scale as provided.

(*e*) Under this clause a county inspector can in future stamp and verify in a borough the weights, etc., of persons in the borough, provided they either live or have their principal place of business in the county.

(*f*) This removes the doubt which existed as to whether a weighing instrument stamped in one district was legal throughout the Kingdom without re-stamping.

S. 16. The definition of "weighing instrument" in section thirty-five of the Act of 1889 shall include a weighing instrument constructed to also calculate and indicate the price in money.

SCHEDULE.

Part I.—Enactments repealed as from the date when regulations—referred to in s. 5—first made came into force: s. 30 and part s. 43—as to allotment of separate districts to inspectors—of Act of 1878; s. 9 of Act of 1889.

Part II.—Enactment repealed as from the date when Order in Council (referred to in s. 9) fixing new fees comes into force: First Schedule of Act of 1889.

WHIPPING.

The Whipping Act, 1862 (25 & 26 Vict. c. 18), authorises punishment of whipping. See also S. J. Act, 1884, s. 3.

WIFE.

As to protection of married women (property and person), see pp. 434, 435, *post.*

Immunity of wife—*Coercion.*—A wife cannot be convicted of any larceny, burglary, forgery, or for uttering forged notes, if the offence is committed in the *presence* of her husband, as she is presumed to have acted under his coercion, and such coercion excuses her act, but this presumption may be rebutted if the circumstances of the case show that in point of fact she was not coerced (1 Hale, 516; *R.* v. *Cohen* (1868), 32 J. P. 565; 11 Cox, 99). As to receiving goods, see *R.* v. *Wardroper* (1860), 29 L. J. 116.

In treason, murder, homicide, perjury, and in misdemeanors generally, this "coercion" will not avail her.

Property of wife.—Before the Married Women's Property Act, 1882, the only ground on which a wife could proceed against her husband was for personal violence, and since the Act no proceeding is competent except in reference to her separate estate. See Married Women's Property Act, 1882, ss. 14—16, p. 434, *post.* But no criminal proceeding can be taken by a wife against her husband *while they are living together*, concerning any property claimed by her. See p. 435, *post.*

Husband's goods.—By the common law, a woman cannot be convicted of stealing goods belonging to her husband, or to her husband and others, but this has been modified by the Married Women's Property Act, 1882.

Husband and wife as witnesses.—See JUSTICES, "EVIDENCE," Part I., *ante;* also 67 J. P. 543. As to evidence *against each other* see Married Women's Property Act, 1884, p. 435, *post.*

Protection for husband or wife of habitual drunkard.—The Licensing Act, 1902, s. 5, enacts that where the husband of a married woman is an habitual drunkard, as defined by s. 3 of the Habitual Drunkards Act of 1879 (*g*), the wife shall be entitled to apply for an order under the Summary Jurisdiction (Married Women) Act, 1895, and

Where the wife is an habitual drunkard, the husband may obtain an order which may, at the discretion of the court, contain all or any of the following particulars :

(a) That he be no longer bound to cohabit with his wife.
(b) As to the legal custody of children of the marriage.
(c) As to payment to wife of a weekly sum (not exceeding £2) for maintenance.
(d) As to payment of costs by the parties.

The section contains a proviso enabling court to commit the wife (provided she consents) to a duly licensed retreat.

Under s. 11 of the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), any person, who is an habitual drunkard, convicted of any offence named in the Act against children, and is the parent, or is living with the parent, of the child, may be ordered to be detained in a retreat willing to receive him, with consent of such person, any objection of wife, or husband, being considered.

Married Women's Property Act, 1882.

(45 & 46 Vict. c. 75.)

This Act repeals the Act of 1870. Since December 31st, 1882, all wives, whether married before that date or since, possess the same rights of property as if they were unmarried, their marriage making no difference whatever.

Sections 12, 16 of Act relate to criminal proceedings.

S. 12.—"Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property, as if such property belonged to her as a feme sole. . . . In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property ; and in any proceeding under this section, a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding : Provided always, that no criminal proceedings shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were

(*g*) See definition, p. 296, *ante*.

living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife."

By the common law a woman cannot be convicted of stealing goods belonging to her husband, or to her husband and others, but this has been modified by s. 16 of Act of 1882, which provides as follows :

S. 16.—"A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to the property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband."

MARRIED WOMEN'S PROPERTY ACT, 1884.
(47 & 48 Vict. c. 14.)

This Act was passed to remove any doubts as to the competency of a husband to give evidence against his wife in proceedings under this section, and it enables the husband to give evidence against his wife in like cases to those in which the wife may give evidence against her husband under s. 12 of the Act of 1882.

As to evidence which may be given in the case of husband and wife, see Part II., CONSTABLES, Chap. V., *ante*.

SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895.
(58 & 59 Vict. c. 39.)

This Act amends the law relating to the summary jurisdiction of magistrates in reference to married women, and provides a married woman with a cheap and summary remedy, equal to a decree of a judicial separation in the Divorce Court, for various specified offences. By s. 5 of the Licensing Act, 1902, habitual drunkenness is made an additional ground of separation, and a married man is now enabled to obtain an order of separation on that account.

Any married woman whose husband

(a) has been convicted summarily of an aggravated (*h*) assault upon her ; or

(b) has been convicted upon indictment of an assault upon her, and fined £5 or imprisoned for at least two months ; or

(c) has deserted her (*i*) ; or

(d) has been guilty of persistent cruelty to her or wilful neglect to provide reasonable maintenance for her or her infant children, and thereby caused her to leave and live apart from him ; or

(*h*) See 24 & 25 Vict. c. 100, s. 43.

(*i*) See "DESERTION," p. 436, *post*.

(e) is an habitual drunkard as defined by s. 3 of the Habitual Drunkards Act, 1879 (Licensing Act, 1902, s. 5),

may apply to a court of summary jurisdiction for an order or orders containing all or any of the following provisions :

(a) That the applicant be no longer bound to cohabit with her husband (which provision shall have the effect of a decree of judicial separation) ;
(b) That the legal custody of her children (under age of sixteen) be given her ;
(c) That she receive a weekly sum (not exceeding £2) for maintenance ;
(d) A provision for payment of costs by either or both of the parties.

The adultery of the wife will be a bar to any order, provided the husband has not condoned or connived at it (58 & 59 Vict. c. 49, ss. 4, 6).

DESERTION.

The question of "desertion" is a question of fact for the justices, varying by the circumstances of each case.

Desertion is the wilful absconding of the husband in spite of the wishes of the wife (*Thompson* v. *Thompson* (1858), 27 L. J. 65), and means not only that the husband has absented himself, but that he has left his wife unprovided for (*Henty* v. *Henty* (1875), 33 L. T. 263). See also *Cargill* v. *Cargill* (1858), 27 L. J. P. & M. 69.

Frailty of temper, unless shown by intolerable excesses, is not a reasonable cause for a husband withdrawing from his wife the protection of his home and society. If submission is the duty of the wife, protection is no less that of the husband (*Yeatman* v. *Yeatman* (1868), 18 L. T. 415).

By the Poor Law Amendment Act, 1834, s. 57, a man is legally liable to maintain the children of his wife born before marriage, whether they are legitimate or illegitimate, until they are sixteen.

WOMEN AND GIRLS—PROTECTION OF.

[For statutory provisions relating to Rape, Abduction, Abortion, Indecent Assault, etc., see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 48—55, and under their several titles, GENERAL SUBJECTS, *ante*.]

The Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), contains special provisions for the protection of women and girls.

The following is a synopsis of Act ; offences are not triable at sessions :

PART I.

Procuration.—To "procure" women or girls for immoral purposes, or to procure their defilement by threats, fraud, etc., is an indictable misdemeanor (ss. 1—3). See p. 438, *post*.

Defilement.—The "defilement" of any girl under the age of thirteen (*j*) is felony ; the attempt is a misdemeanor (s. 4). See p. 439, *post*.

Personation.—The section contains a clause declaring an offender guilty of rape who induces a married woman to permit him to have connection with her by personating her husband.

The defilement of or attempt to have unlawful carnal knowledge (*k*) of any girl between thirteen and sixteen years of age is a misdemeanor (s. 5).

(*It shall be a defence* if the person charged can show that he had reasonable cause to believe that the girl was above the age of sixteen.)

Idiot.—The defilement of or attempt to defile any female idiot, or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, is a misdemeanor. See p. 439, *post*.

Premises.—The owner or occupier of any premises is liable who permits the defilement of any young girl on his premises (*l*) (s. 6), p. 439, *post*.

(*It shall be a defence* if the person charged can show that he had reasonable cause to believe that the girl was above the age of sixteen.)

Abduction.—See p. 439, *post*.

Detention.—See p. 439, *post*.

Search warrant.—Warrants may be issued to search (*m*) for any woman or girl supposed to be detained in any place for immoral purposes (s. 10).

A woman or girl shall be deemed to be so detained—

(1) If she is under sixteen years of age ;

(2) If over sixteen and under eighteen, she is detained against her will or the will of parent or guardian ;

(3) If above eighteen she is detained against her will.

(*j*) This section is substituted for 38 & 39 Vict. c. 94, s. 3, in which the age limit was *twelve*. Consent on the part of the child is no defence.

(*k*) A girl can consent to and may be lawfully married at twelve and a boy at fourteen. The word "unlawful" in Act excludes the consummation of marriage.

(*l*) This applies to a mother permitting her daughter's prostitution in her own home (*R.* v. *Webster* (1885), 16 Q. B. D. 134 ; 50 J. P. 456).

(*m*) The Industrial Schools Act Amendment Act, 1880, authorises any person to bring before the court any girl under fourteen years frequenting a brothel ; but does not authorise a search of premises to find her. The intent to defile her need not be proved as in the new Act.

The warrant must be executed by a superintendent, inspector, or other officer of police, who shall be accompanied by the parent, relative, or guardian, or other person making the information, if such person so desire, unless the justices shall otherwise direct.

Gross indecency.—S. 11 relates to acts of "gross indecency" by male persons. See p. 440, *post*.

Custody of girl.—S. 12 authorises removal from improper guardianship of girl under age of sixteen. See p. 440, *post*.

PART II.

Part II. of Act relates to Brothels. See p. 440, *post*.

PART III.

Procedure.—Ss. 14—19 relate to Procedure and Costs.

CRIMINAL LAW AMENDMENT ACT, 1885.
(48 & 49 VICT. C. 69.)

ABSTRACT OF SECTIONS.

Ss. 1, 2.—**Procuration.**—To procure or attempt to procure any girl or woman under twenty-one years of age (not being a prostitute or of known immoral character), to have unlawful carnal connection with any person; or

Any woman or girl to become a common prostitute; or

Any woman or girl to leave the United Kingdom, with intent that she may become an inmate of a brothel elsewhere; or

Any woman or girl to leave her usual place of abode in the United Kingdom (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel is a misdemeanor.

S. 3.—To attempt to procure by threats or intimidation any woman or girl to have any unlawful carnal connection; or

To procure by false pretences or false representations any woman or girl not being a prostitute or of known immoral character to have unlawful carnal connection; or

To apply, or administer to, any woman or girl any drug, matter, or thing (*n*), with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with her—is a misdemeanor.

Proviso.—No person can be so convicted upon the uncorroborated evidence of *one witness only*.

S. 4.—**Defilement.**—Any person who—

Unlawfully and carnally knows any girl under the age of thirteen years shall be guilty of Felony, and be liable to penal servitude for life (*o*) The attempt is a misdemeanor (*p*).

The evidence of a child of tender years can be received.

(*n*) This will probably be held to include intoxicating drink when the intent can be established.

(*o*) 33 & 39 Vict. c. 94, is repealed. See *Schedule to Act*.

(*p*) Section 52 of 24 & 25 Vict. c. 100, made it a misdemeanor to indecently assault any female or to "*attempt to have carnal knowledge of any girl under twelve years of age*." The words italicised have been repealed (Schedule, Act of 1885), but the provision as to indecent assault

S. 5.—To unlawfully and carnally know or attempt to have carnal knowledge of any girl (*q*) above thirteen and under sixteen years of age is a misdemeanor. Prosecution must be commenced within three months of commission of offence.

Idiot or imbecile.—Any person who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot, or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, shall be guilty of a misdemeanor.

S. 6.—**Premises.**—Any person who being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of such age as in this section mentioned to resort to or be in or upon such premises [even when it is her home] for the purpose of being unlawfully and carnally known by any man, shall, if girl be under thirteen, be guilty of felony. If girl be over thirteen and under sixteen the offence is a misdemeanor.

Ss. 7, 8 deal with offences of abduction and detention.

S. 7.—**Abduction.**—The abduction or causing to be taken out of the possession of her parents or guardians any unmarried girl under eighteen years of age, with intent that she may be unlawfully and carnally known, is a misdemeanor.

(*It shall be a defence* if the person charged can show that he had reasonable cause to believe that the girl was over eighteen (*r*).)

See also p. 153 (GENERAL SUBJECTS), *ante*.

Detention.—The detention of any woman or girl upon any premises against her will, with intent that she may be unlawfully and carnally known, or the detention of a woman in a brothel, is a misdemeanor (s. 8).

Detaining such female's clothing is equivalent to detaining herself.

remains. It is difficult to imagine an attempt to carnally know which is not also an indecent assault. *The former offence is much more difficult of proof than the latter, and cannot be tried at quarter sessions. The punishment is the same for both.* Therefore, where the girl did not consent, or having consented, was under the age of thirteen years, it will be better in most cases to indict for indecent assault only. *If, however, one of the witnesses is very young, the contrary course might be advisable, for upon the hearing of a charge under the new section* (Act of 1885) *the testimony* (*unsworn*) *of a child may be received, and if corroborated by some other material evidence, the court may act on it. Offenders under sixteen may be flogged.*

(*q*) The section manifestly applies whether the girl consents or not. But it leaves s. 2 of 43 & 44 Vict. c. 45 untouched, so that the effect seems to be that where a girl is between thirteen and sixteen years old her consent is material in a charge of indecent assault, but immaterial if the assault amounts to an attempt to have carnal knowledge.

(*r*) It is difficult to say what will be the effect of this proviso upon s. 55 of 24 & 25 Vict. c. 100, because, under s. 16 of the Criminal Law Amendment Act, 1885, no person is to be exempted from liability under any other penal enactment, it was held in *R.* v. *Prince* (1875), 39 J. P. 676, that such reasonable belief on the part of the defendant was immaterial. If the girl is under sixteen years it will be safest to proceed under the old enactment.

(A proviso prohibits legal proceedings against woman or girl, who, having been deprived of her clothing, is subsequently found in possession of such wearing apparel as was necessary to enable her to leave premises.)

S. 9.—**Trial.**—On trial for rape jury may convict of certain misdemeanors or for indecent assault.

S. 10.—**Search Warrant.**—See p. 437, *ante*.

S. 11.—**Gross indecency.**—Any male person who, in public or private, commits, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor.

S. 12.—**Custody of girl.**—Where it is proved that the seduction or prostitution of a girl under sixteen has been caused, encouraged, or favoured by parent or guardian, it shall be in the power of the court to divest such parent, guardian, etc., of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of twenty-one.

PART II.

S. 13.—**Brothels** (*s*).—Any person who: (1) Keeps or manages or assists in the management of a brothel; or (2) being tenant, lessee, or occupier of any premises, knowingly permits such premises to be used as a brothel; or (3) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same with the knowledge that such premises are to be used as a brothel, or is party to the continued use of premises as such shall, on summary conviction, be liable—

(1) To a penalty of £20, or imprisonment for three months;
(2) On second conviction to a penalty of £40, or imprisonment for four months;

in case of a third or subsequent conviction such person may be required to enter into a recognizance to be of good behaviour for twelve months.

Appeal.—The enactments for encouraging prosecutions of disorderly houses contained in ss. 5—7 of 25 Geo. 2, c. 36, as amended by 58 Geo. 3, c. 70, s. 7, shall, with the necessary modifications, be deemed to apply to prosecutions under this section, and the said enactments shall, for the purposes of this section, be construed as if the prosecution on such enactments mentioned included summary proceedings under this section as well as a prosecution on indictment.

PART III.

Ss. 14—19 relate to "Procedure" and "Costs."

S. 20.—**Witnesses.**—Every person charged with an offence under this Act or under s. 48 and ss. 52—55 of 24 & 25 Vict. c. 100, shall be competent but not compellable witnesses.

(*s*) A "brothel" is a place where people of opposite sexes are allowed to resort for illicit intercourse.

A house occupied by one woman for purpose of her own prostitution is not a brothel (*Singleton* v. *Ellison* (1895), 59 J. P. 119; 64 L. T. 123). Notice by a credible person to a landlord that his house is being used as a brothel seems to be sufficient to render him liable (see 86 L. T. 13) unless he redresses the evil.

WRECKS.

Under the Merchant Shipping Acts the Board of Trade have throughout the United Kingdom the general superintendence of all matters relating to wreck, and can appoint receivers of wreck.

Receivers have power in cases of wreck to summon help and to employ boats, waggons, etc., and persons refusing to assist are liable to a fine of £100.

In absence of receiver the following persons are in case of wreck or accident authorised to act :

Any principal officer of customs or coastguard or inland revenue, sheriffs, justices, naval and military commissioned officers on full pay.

The officer acting to be considered the agent of the receiver, to whom goods or articles are to be handed over.

Salvage.—Persons who assist in saving lives of persons, or cargo, etc., of any ship stranded or wrecked are entitled to reasonable amount of salvage from owners.

Larceny Act, 1861.
(24 & 25 Vict. c. 96, ss. 64—66.)

To plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel is felony, punishable by penal servitude or imprisonment.

Persons found in illegal possession of shipwrecked goods are liable to penalties, as also are persons found offering for sale shipwrecked goods unlawfully taken.

Malicious Damage Act, 1861.
(24 & 25 Vict. c. 97, ss. 47—49.)

The exhibiting of false signals, etc., with intent to bring any ship, vessel, boat, etc., into danger is felony, as is also the removing or concealing buoys or other sea marks, or the destroying wrecks or any articles belonging thereto.

Offences Against the Person Act, 1861.
(24 & 25 Vict. c. 100, ss. 17, 37.)

Whosoever shall unlawfully and maliciously prevent or impede any person being on board of, or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore in his endeavour to save his life, or shall unlawfully and maliciously prevent and impede any person in his endeavour to save the life

of any such person as in this section first aforesaid, shall be guilty of felony.

Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorised in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanor.

To Restore the apparently Drowned (*t*).

Send immediately for medical assistance, blankets, and dry clothing, but proceed to treat the patient *instantly*, securing as much fresh air as possible.

The points to be aimed at are—first, and immediately, the *restoration of breathing*; and, secondly, after breathing is restored, the *promotion of warmth and circulation*.

The effort to restore life must be persevered in until the arrival of medical assistance, or until the pulse and breathing have ceased for at least an hour.

TREATMENT TO RESTORE NATURAL BREATHING.

Rule 1.—*To maintain a free entrance of air into the windpipe.*—Cleanse the mouth and nostrils: open the mouth; draw forward the patient's tongue, and keep it forward; an elastic band over the tongue and under the chin will answer this purpose. Remove all tight clothing from about the neck and chest.

Rule 2.—*To adjust the patient's position.*—Place the patient on his back on a flat surface, inclined a little from the feet upwards; raise and support the head and shoulders on a small firm cushion or folded article of dress placed under the shoulder-blades.

Rule 3.—*To imitate the movements of breathing.*—Grasp the patient's arm just above the elbow, and draw the arms gently and steadily upwards, until they meet above the head (this is for the purpose of drawing air into the lungs); and keep the arms in that position for two seconds. Then turn down the patient's arms, and press them gently and firmly for two seconds against the sides of the chest (this is with the object of pressing air out of the lungs. Pressure on the breast-bone will aid this).

Repeat these measures alternately, deliberately, and perseveringly, fifteen times in a minute, until a spontaneous effort to respire is perceived, immediately upon which cease to imitate the movements of breathing, and proceed to *induce circulation and warmth*.

(*t*) Directions given by Dr. H. R. Silvester for restoring the apparently dead or drowned, and approved by the Royal Medical and Chirurgical Society.

Should a warm bath be procurable, the body may be placed in it up to the neck, continuing to imitate the movements of breathing. Raise the body for twenty seconds in a sitting position, dash cold water against the chest and face, and pass ammonia under the nose. The patient should not be kept in the warm bath longer than five or six minutes.

Rule 4.—*To excite inspiration.*—During the employment of the above method excite the nostrils with snuff or smelling salts, or tickle the throat with a feather. Rub the chest and face briskly, and dash cold and hot water alternately on them.

Treatment after Natural Breathing has been Restored.

Rule 5.—*To induce circulation and warmth.*—Wrap the patient in dry blankets and commence rubbing the limbs upwards, firmly and energetically. The friction must be continued under the blankets or over the dry clothing.

Promote the warmth of the body by the application of hot flannels, bottles or bladders of hot water, heated bricks, etc., to the pit of the stomach, the armpits, between the thighs, and to the soles of the feet. Warm clothing may generally be obtained from bystanders.

On the restoration of life, when the power of swallowing has returned, a teaspoonful of warm water, small quantities of wine, warm brandy and water, or coffee should be given. The patient should be kept in bed, and a disposition to sleep encouraged. During reaction large mustard plasters to the chest and below the shoulders will greatly relieve the distressed breathing.

Another method of "restoring the apparently drowned" is given in The Sailor's Pocket Book, by Admiral Bedford. The system is a good one (by Dr. Howard), and in vogue in the United States.

YOUTHFUL OFFENDERS ACT, 1901.

See title "Children," p. 209, *ante.*

APPENDIX.

CRIMINAL LAW CONSOLIDATION.

The Criminal Law was consolidated and amended in 1861 when six Acts (24 & 25 Vict. cc. 94, 96, 97, 98, 99, and 100) were passed dealing with accessories, larceny, malicious damage, forgery, coinage offences, and offences against the person.

ACCESSORIES (*a*) AND ABETTORS ACT, 1861.

Ss. 1, 2, deal with accessories before the fact; ss. 3, 4, accessories after the fact; ss. 5—7, as to procedure and prosecution; s. 8, as to abettors in misdemeanors; s. 9, jurisdiction, etc.

LARCENY ACT, 1861.

(24 & 25 Vict. c. 96.)

An Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar Offences.

The Act contains 123 sections.

S. 1.—*Interpretation of terms:* "Document of title to goods"; "title to lands"; "trustee"; "valuable security"; "property"; "night," etc.

Night.—For purposes of Act, night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day (*b*).

S. 2. "Every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature . . ."

S. 3. *Bailee.*—As to larceny by "bailee." See p. 304, *ante*.

S. 4. *Punishment.*—Punishment for simple larceny (except in cases otherwise provided for). Penal servitude three years, or imprisonment not exceeding two years (*c*).

Ss. 5, 6.—As to number of "counts" chargeable, see p. 305, *ante*.

Ss. 7 to 9.—As to larceny after previous convictions: for felony; for indictable misdemeanor; after two summary convictions.

(*a*) See title "Accessories," GENERAL SUBJECTS, p. 154, *ante*.

(*b*) This is of special importance in cases of burglary. See p. 305, *ante*.

(*c*) If offender be a male under sixteen years of age whipping may be inflicted.

Ss. 10 to 26. *Cattle, animals, etc.*—As to larceny of horses, cattle, sheep, deer, hares and rabbits in warren, dogs, etc., see pp. 305, 306, *ante*; as to larceny of dogs (*d*), see p. 228, *ante*.

S. 21.—As to stealing beasts or birds ordinarily kept in a state of confinement (*e*).

S. 23. *Pigeons.*—"Whosoever shall unlawfully and wilfully kill, wound, or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law, shall, on conviction before a justice of the peace, forfeit and pay, over and above the value of the bird, any sum not exceeding two pounds." See note (*i*), p. 306, *ante*.

Ss. 24, 25. *Fish.*—As to the unlawfully taking of fish in private fishery, a penalty of £5 attaches, but the provisions of s. 24 are not to extend to any person angling in the day time. Under s. 25 the tackle of persons found at any time fishing against the provisions of the Act may be seized by owner of fishery or servant of owner. Where the tackle of persons angling in the daytime is so seized they shall be "exempted from the payment of any damages or penalty for such angling."

S. 26. *Oysters.* — Relates to stealing or dredging for oysters in fisheries.

Larceny of written instruments.

Ss. 27 to 30.—As to larceny of bonds, bills, deeds, wills, etc.

Larceny of things attaching to or growing on land.

S. 31.—Larceny of metal, glass, wood, etc., fixed to house or land.

Ss. 32, 33. *Trees, shrubs.*—As to trees or shrubs. See p. 306, *ante*.

S. 34. *Fence.*—Stealing any live or dead fence, wooden fence, stile, or gate.

Ss. 36, 37. *Fruit, etc.*—As to stealing fruit or vegetable productions. See p. 307, *ante*.

Ss. 38, 39. *Mines.*—As to larceny from mines.

Larceny from the person and other like offences.

Ss. 40 to 43.—As to robbery and assault with intent to rob. See p. 301, *ante*.

Ss. 44, 45.—As to sending letter demanding money, etc., with menaces.

Ss. 46, 47.—As to sending letter threatening to accuse of certain crimes (with intent to extort), or of "infamous crime"; "the abominable crime of buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act."

S. 48.—Inducing a person by violence or threats to execute deeds, etc., with intent to defraud, is a felony.

Sacrilege, burglary, etc.

Ss. 50 to 59 relate to the crimes of sacrilege, burglary, and housebreaking. See, under the various titles, GENERAL SUBJECTS, *ante*.

(*d*) Corruptly taking money to restore dogs stolen is a misdemeanor under s. 20 of Act punishable by imprisonment for eighteen months.

(*e*) As to the stealing of animals, "*feræ naturæ*," of a wild nature, see title "Larceny," GENERAL SUBJECTS, *ante*.

S. 50. *Sacrilege.*—"Whosoever shall break and enter any church, chapel, meeting house, or other place of divine worship, and commit any felony therein, or being in any church, chapel, meeting house, or other place of divine worship shall commit any felony therein and break out of the same, shall be guilty of felony. . . . ." Punishment: Penal servitude for life, or for any term not less than three years; or to be imprisoned for any term not exceeding two years.

S. 51. *Burglary.*—"Whosoever shall enter the dwelling-house of another with intent to commit any felony therein, or being in such dwelling-house shall commit any felony therein, and shall in either case break out of the said dwelling-house in the night, shall be deemed guilty of burglary."

S. 52.—"Whosoever shall be convicted of the crime of burglary shall be liable," at the discretion of the court, "to be kept in penal servitude for life," or for any term not less than three years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

S. 56. *Housebreaking.*—"Whosoever shall break and enter any dwelling-house, schoolhouse, shop, warehouse, or counting-house, and commit any felony therein, or, being in any dwelling-house, schoolhouse, shop, warehouse, or counting-house, shall commit any felony therein, and break out of the same, shall be guilty of felony," and shall be liable, at the discretion of the court, to be kept in penal servitude for fourteen years and not less than three years; or to be imprisoned for any term not exceeding two years.

S. 58. *Being found armed at night with intent to break and enter any house.*—"Whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling-house, or other building whatsoever, and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, shall be guilty of a misdemeanor. . . . ."

S. 59. *Previous conviction.*—"Whosoever shall be convicted of any such misdemeanor as in the last preceding section mentioned, committed after a previous conviction, either for felony or such misdemeanor, shall on such subsequent conviction be liable," at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years and not less than three years; or to be imprisoned for any term not exceeding two years.

Ss. 60, 61.—As to larceny in houses.

S. 62.—As to larceny in manufactories.

Ss. 63 to 66.—As to larceny in ships, wharfs, etc. See "WRECKS," p. 441, *ante*.

Ss. 67 to 73. *Embezzlement.*—As to larceny or embezzlement (*f*) by clerks, servants, or persons in the public service.

(*f*) See title "Embezzlement," GENERAL SUBJECTS, *ante*.

S. 74. *Tenants, etc.*—As to larceny by tenants or lodgers.

As to Frauds by Agents, Bankers, or Factors, etc.

Ss. 75 to 79 (*g*) apply to agents, bankers and factors, to persons under powers of attorney fraudulently selling property, and to factors obtaining advances on the property of their principals.

S. 80.—Trustees fraudulently disposing of property are guilty of a misdemeanor.

False Pretences.

Ss. 88 to 90 relate to false pretences. See p. 252, *ante*.

Receiving Stolen Goods, Restitution, etc.

S. 91 relates to receivers. See p. 305, *ante*.

S. 100.—As to restitution, rewards, etc., see pp. 391, 392, *ante*.

S. 101.—Taking reward for helping to the recovery of stolen property without bringing the offender to trial is felony. See p. 392, *ante*.

S. 102. *As to advertising a reward for the return of stolen property, etc.*—"Whosoever shall publicly advertise a reward for the return of any property whatsoever which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost the money so paid or advanced, or any other sum of money or reward for the return of such property, or shall print or publish any such advertisement, shall forfeit the sum of fifty pounds for every such offence to any person who will sue for the same by action of debt, to be recovered, with full costs of suit."

Apprehension of Offenders.

Ss. 103 to 123 relate to apprehension of offenders, etc. See p. 305, *ante*.

S. 103.—"Any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of this Act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law. . . . ." A justice, upon good grounds of suspicion proved on oath, may grant a search warrant. Any person to whom stolen property is offered may seize the party offending.

S. 104.—"Any constable or peace officer may take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place, during the night, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony against this Act, and shall take such person, as soon as reasonably may be, before a justice of the peace, to be dealt with according to law."

Ss. 110, 114, 115.—Appeals, venue (see p. 305, *ante*), jurisdiction of Admiralty, etc.

(*g*) Sections 75 and 76 are repealed by Larceny Act, 1901.

MALICIOUS DAMAGE ACT, 1861.
(24 & 25 Vict. c. 97.)

An Act to consolidate and amend the Statute Law of England and Ireland relating to Malicious Injuries to Property.

MALICIOUS INJURIES TO PROPERTY (*h*).

Malicious injuries to property are by this Act classified as follows:

Ss. 1 to 8.—Injuries by fire (*i*) to buildings, and goods therein; setting fire to church or chapel; to dwelling-house; to outhouse; to railway station; to public building; to other buildings; to goods in buildings; attempting to set fire to buildings. The offences enumerated in these sections are felony, punishable by penal servitude or imprisonment.

Ss. 9, 10.—Injuries by explosive substances to buildings and goods therein.

Ss. 11, 12.—Injuries to buildings by rioters, etc.

S. 13. *Injuries to buildings by tenants.*—"Whosoever, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, held for any term of years or other less term, or at will, or held over after the termination of any tenancy, shall unlawfully and maliciously pull down or demolish, or begin to pull down or demolish, the same or any part thereof, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling-house or building, or part of such dwelling-house or building, shall be guilty of a misdemeanor."

Ss. 14, 15.—Injuries to manufactures, machinery, etc.

Injuries to Corn, Trees, and Vegetable Productions.

Ss. 16 to 18.—Setting fire to corn, crops, stacks, etc.

S. 19. *Hopbinds.*—"Whosoever shall unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops shall be guilty of felony. . . ." Punishment: Penal servitude for any term not exceeding fourteen and not less than three years, or imprisonment for two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

S. 20. *Trees.*—"Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, in case the amount of the injury done shall exceed the sum of one pound, shall be guilty of felony . . . ."

S. 21.—Destroying or damaging trees, shrubs, etc. of the value to more than £5 growing elsewhere than in a pleasure ground, etc., shall be guilty of felony.

S. 22. *Damaging trees wheresoever growing.*—"Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy

(*h*) See also title "Malicious Damage," GENERAL SUBJECTS, *ante*, p. 353.

(*i*) See also title "Arson," p. 169, *ante*.

or damage the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be growing, the injury done being to the amount of one shilling at the least, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding three months (*k*), or else shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding five pounds, as to the justice shall seem meet; . . . ."

S. 23. *Fruit or vegetable production.*—"Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory, shall on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months (*l*), or else shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding twenty pounds, as to the justice shall seem meet; . . . ."

S. 24. *Destroying vegetable productions not growing in gardens.*—"Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed, not being a garden, orchard, or nursery ground, shall on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month (*m*), or else shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, shall be committed as aforesaid for any term not exceeding one month, unless payment be sooner made; . . . ."

S. 25. *Injuries to fences.*—"Whosoever shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, shall on conviction (*n*) thereof before a justice of the peace for the first offence forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding five pounds, as to the justice shall seem meet; . . . ."

Ss. 26 to 28. *Mines.*—Injuries to mines.

Ss. 30, 31.—Injuries to sea and river banks, and to works on rivers, canals, etc.

(*k*) A second conviction renders offender liable to imprisonment for twelve months, and a third offence amounts to a misdemeanor.

(*l*) A second offence is felony.

(*m*) For second offence, six months.

(*n*) On second conviction, twelve months.

S. 32. *Injuries to ponds.*—Breaking down the dam of a fishery, etc., or mill dam, or poisoning fish therein—Misdemeanor.

Ss. 33, 34.—Injuries to bridges, viaducts, and toll bars.

Ss. 35 to 38. *Injuries to railway carriages and telegraphs.*—Placing wood, etc., on railway with intent to obstruct or overthrow any engine, etc. Obstructing engine or carriages. Injuring, or attempting to injure, telegraphs.

S. 39.—*Works of art.*—Injuries to works of art.

Injuries to Cattle and other Animals.

S. 40.—"Whosoever shall unlawfully and maliciously kill, maim, or wound any cattle shall be guilty of felony. . . ."

S. 41.—"Whosoever shall unlawfully and maliciously kill, maim, or wound any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, shall on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months (*o*), or else shall forfeit and pay, over and above the amount of injury done, such sum of money, not exceeding twenty pounds, as to the justice shall seem meet; . . . ."

Damaging Ships or Vessels.

Ss. 42 to 49.—As to damage to ships and vessels exhibiting false signals, removing buoys or sea marks, destroying wreck, etc.—Felony.

S. 47.—"Whosoever shall unlawfully mask, alter, or remove any light or signal, or unlawfully exhibit any false light or signal, with intent to bring any ship, vessel, or boat into danger, or shall unlawfully and maliciously do anything tending to the immediate loss or destruction of any ship, vessel, or boat, and for which no punishment is herein-before provided, shall be guilty of felony, ..."

S. 50.—*Threatening Letters.*—Sending letters threatening to burn or destroy—Felony.

S. 51.—*Injuries not before provided for.*—"Whosoever shall unlawfully and maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is herein-before provided, the damage, injury, or spoil being to an amount exceeding five pounds, shall be guilty of a misdemeanor, and being convicted thereof shall be liable (*p*), at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour; . . . ."

S. 52.—Persons committing damage to any property, in any case not previously provided for, may be committed or fined, and compelled by a justice to pay compensation not exceeding five pounds (*q*).

(*o*) Second conviction, twelve months.

(*p*) If offence be committed *at night* (9 P.M. to 6 A.M.) offender is liable to penal servitude for five years, or imprisonment two years.

(*q*) Not to extend to certain cases where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting fishing, or in the pursuit of game.

By s. 53.—The provisions of s. 52 are to extend to injuries to trees, where no punishment is hereinbefore provided.

Ss. 54, 55.—Making gunpowder to commit offences, and searching for the same (*r*).

Ss. 56 to 79.—As to other matters.

S. 56.—As to principals in the second degree and accessories.

S. 57. *Loitering.*—"Any constable or peace officer may take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony against this Act, and shall take such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law."

S. 58. *Malice.*—"Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise."

S. 61. *Apprehension.*—"Any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorised by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law."

The remaining sections of Act relate to procedure, punishment, and appeal.

FORGERY ACT, 1861.

See under title "Forgery," GENERAL SUBJECTS, p. 275, *ante*.

COINAGE OFFENCES ACT, 1861.

See under title "Coinage Offences," GENERAL SUBJECTS, p. 212, *ante*.

OFFENCES AGAINST THE PERSON ACT, 1861.

(24 & 25 Vict. c. 100.)

An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person.

OFFENCES AGAINST THE PERSON.

S. 1. *Homicide.*—"Whosoever shall be convicted of murder shall suffer death as a felon."

S. 2.—"Upon every conviction for murder the court shall pronounce sentence of death . . ."

(*r*) Justice may issue warrants for searching houses, etc., for such gunpowder.

S. 3.—"The body of every person executed for murder shall be buried within the precincts of the prison in which he shall have been last confined after conviction, and the sentence of the court shall so direct."

S. 4.—Conspiring or soliciting to commit murder.

S. 5. *Manslaughter.*—Whosoever shall be convicted of manslaughter shall be liable, at the discretion of the court, to be kept in penal servitude or to be imprisoned for not exceeding two years, or to pay such fine as the court shall award, in addition to or without any such other punishment.

S. 6.—As to form of indictment for murder or manslaughter.

S. 7. *Excusable homicide.*—"No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony."

S. 8.—"Petit treason."

S. 9.—Murder or manslaughter committed abroad.

S. 10.—Provision for the trial of murder and manslaughter where the death or cause of death only happens in England or Ireland.

Ss. 11 to 15 deal with "attempts" to murder.

S. 16.—Sending letters threatening to murder.

Ss. 17 to 35 deal with acts causing or tending to cause danger to life or bodily harm (*s*).

S. 22. *Using chloroform to commit offence.*—"Whosoever shall unlawfully apply or administer to or cause to be taken by, or attempt to apply or administer to or attempt to cause to be administered to or taken by, any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony . . . ."

S. 23. *Administering poison, etc., so as to endanger life, etc.*—"Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony . . . ."

S. 24.—Maliciously administering poison, etc., with intent to injure, aggrieve, or annoy, etc., is a misdemeanor.

S. 25.—If jury be not satisfied that person charged is guilty of felony, but is guilty of misdemeanor they may find him guilty of misdemeanor.

S. 26. *Apprentices.*—Not providing apprentices or servants with food, etc., whereby life is endangered. See "Apprentices," p. 164, *ante*.

S. 27. *Exposing children.*—"Whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanor . . . ."

Ss. 28, 29. *Explosive, corrosive fluid.*—To cause injuries, etc., by gunpowder, or by throwing corrosive fluid, is felony.

S. 30.—Injury to building or ship by gunpowder or explosive.

(*s*) See titles "Assault" (*wounding*). "Apprentices." "Children." "Wrecks," GENERAL SUBJECTS, *ante*.

S. 31. *Spring guns, etc.*—"Whosoever shall set or place, or cause to be set or placed, any spring gun, man trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may destroy or inflict grievous bodily harm upon a trespasser or other person coming in contact therewith, shall be guilty of a misdemeanor . . . : Provided, that nothing in this section contained shall extend to make it illegal to set or place any gin or trap such as may have been or may be usually set or placed with the intent of destroying vermin: Provided also, that nothing in this section shall be deemed to make it unlawful to set or place or cause to be set or placed, or to be continued set or placed, from sunset to sunrise, any spring gun, man trap, or other engine which shall be set or placed, or caused or continued to be set or placed, in a dwelling house, for the protection thereof."

S. 32. *Placing wood, etc., on railway.*—Placing wood, etc., on a rail way with intent to endanger passengers.

S. 33.—Casting stone, etc., upon a railway carriage with intent to endanger the safety of any person therein.

S. 34.—As to acts endangering passengers by railway.

S. 35. *Furious driving.*—"Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor . . . ."

Ss. 36 to 46.—*Assaults.*—The sections deal with assaults on clergymen, magistrates, police officers, etc., in execution of their duties; assaults to prevent the sale of grain, assaults on seamen, assaults arising from combination, aggravated assaults on females and boys, assaults occasioning bodily harm, common assaults, etc. See p. 169, *ante*.

S. 47.—Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable, at the discretion of the court, to be kept in penal servitude, or to be imprisoned for not exceeding two years, with or without hard labour; and whosoever shall be convicted upon an indictment for a common assault shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding one year, with or without hard labour.

Ss. 48 to 55. *Rape, etc.*—Relate to rape (*t*), abduction, etc. See titles, GENERAL SUBJECTS, *ante*, and "Women and Girls—Protection of," p. 436, *ante*.

S. 48.—Whosoever shall be convicted of the crime of rape shall be guilty of felony.

S. 56. *Child-stealing.*—"Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away or detain, any child (*u*) under the age of fourteen years, with intent to deprive any parent, guardian, or other person, having the lawful care or charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, and whosoever shall, with any such intent, receive or harbour

(*t*) The question of admissibility of statements in cases of rape (see p. 389, *ante*) has been extended to some extent by *Rex* v. *Osborne*, [1905] 1 K. B. 551.

(*u*) The section is not to apply to any person who shall have claimed any right to the possession of such child, or shall be the mother or father of such child.

any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away, or detained, as in this section before mentioned, shall be guilty of felony . . . ."

S. 57. *Bigamy.*—See under title "Bigamy," p. 185, *ante.*

S. 58. *Attempts to procure abortion.*—See "Abortion, Attempts to Procure," p. 153, *ante.*

S. 60. *Concealing birth of child.*—See p. 216, *ante.*

S. 61. *Unnatural offences.—Sodomy and bestiality.*—"Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable . . . to be kept in penal servitude for life . . ." (*x*).

S. 62. "Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . to be kept in penal servitude for any term not exceeding ten years . . ."

S. 63.—Carnal knowledge—proof.

Ss. 64, 65. *Explosive.*—Making or having gunpowder, etc., with intent to commit any felony, issue of search warrant, etc.

S. 66. *Loitering.*—"Any constable or peace officer may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony in this Act mentioned. . . ."

Ss. 67 to 79 deal with procedure, punishment, costs, jurisdiction of Admiralty, etc.

INDICTABLE OFFENCES COMMITTED ON THE HIGH SEAS OR ABROAD.

In cases of offences committed on the high seas or abroad, or within the jurisdiction of the Admiralty, justices of place where offender may be or may be supposed to be may issue warrant to apprehend. The English courts have not jurisdiction at common law over offences on high seas in foreign ships, although within three mile limit (*R. v. Keyn*, 41 J. P. 517); (41 & 42 Vict. c. 73).

LICENSING ACTS.

LICENSING ACT, 1872.

(35 & 36 Vict. c. 94.)

Ss. 1 and 2.—As to citation and extension of Act.

S. 3. *Illicit sales.*—"No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorised by his licence to sell the same. Any person selling or exposing for sale by retail any intoxicating liquor which

(*x*) Subject to modifications authorised by Penal Servitude Act, 1891 (penal servitude not less than 3 years or imprisonment 2 years).

he is not licensed to sell by retail, or selling or exposing for sale any intoxicating liquor at any place where he is not authorised by his licence to sell the same . . . ." *Penalties:* for first offence, £50, or imprisonment one month; second offence, £100, or imprisonment three months, and possible disqualification for holding of licence for five years; for third offence £100, or imprisonment for six months, and disqualification for any term of years. "In addition to any other penalty (*a*) imposed by this section any person convicted of a second or any subsequent offence under this section shall, if he be the holder of a licence, forfeit such licence . . . ." The section contains a proviso enabling heirs, executors, administrators, etc., of any licensed person who dies before the expiration of his licence, or the trustee of any licensed person who is adjudged a bankrupt, to carry on business on licensed premises until the holding of next ensuing special sessions.

S. 4.—Occupier of unlicensed premises liable for sale of liquor.

S. 5. *Drinking on premises contrary to licence.*—"If any purchaser of any intoxicating liquor from a person who is not licensed to sell the same to be drunk on the premises drink such liquor on the premises where the same is sold, or on any highway adjoining or near such premises, the seller of such liquor shall, if it shall appear that such drinking was with his privity (*b*) or consent, be subject to the following penalties . . . .": For the first offence, £10; for the second and any subsequent offence, £20. "For the purposes of this section the expression 'premises where the same is sold' shall include any premises adjoining or near the premises where the liquor is sold, if belonging to the seller of the liquor or under his control, or used by his permission . . . ."

S. 6.—"If any person having a licence to sell intoxicating liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever belonging to such licensed person, or hired, used, or occupied by him, or on or in any place, whether enclosed or not, and whether or not a public thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such licensed person, with his privity and consent, and such licensed person shall be punished accordingly in manner provided by this Act . . . ." See p. 324.

S. 7. *Sale to children.*—Sale of spirits to children (under sixteen) prohibited. Penalty, 20*s.* first offence; 40*s.* second and subsequent offences.

(*a*) The court may declare liquor found forfeited.

(*b*) If a person drinks the liquor at or near the door, or a person with a waggon and horses draws up in front of or near to the licensed premises, and then purchases liquor, and with the privity or consent, expressed or implied, of the landlord, drinks it near to the premises, it seems an offence would be committed. Beer was purchased and carried across a highway to the occupier of a cottage, who handed the jug back over his garden wall to persons who drank part of the beer on the highway. The jug was re-filled, the beer drunk as before, and appellant saw what was going on. The conviction was quashed, but had there been clear evidence that appellant connived at the drinking the conviction might have been upheld (*Bath* v. *White*, 42 J. P. 375; 26 W. R. 617).

The sale to child under fourteen (except in corked and sealed vessels) is now illegal (Intoxicating Liquors (Sale to Children) Act, 1901).

S. 8.—All sales to be by standard measure.

S. 9.—Penalty on internal communication between licensed premises and house of public resort, £10 per day for every day communication remains open, and forfeiture of licence.

S. 10.—Penalty on illicit storing of liquor—first offence, £10; subsequent offence, £20.

S. 11.—Names of licensed persons to be affixed to premises.

PUBLIC ORDER.

Ss. 12 to 18 deal with offences against public order. See also titles "Drunkenness" and "Licensing Laws," GENERAL SUBJECTS, *ante*.

S. 12.—"Every person found drunk in any highway or other public place (*c*), whether a building or not, or on any licensed premises (*d*), shall be liable to a penalty not exceeding ten shillings," (on second conviction within twelve months, twenty shillings, and on a third or subsequent conviction (within twelve months) forty shillings. See p. 324.) "Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous (*e*) or disorderly behaviour, or who is drunk while in charge on any highway or other public place of any carriage, horse, cattle, or steam engine, or who is drunk when in possession of any loaded fire-arms, may be apprehended, and shall be liable to a penalty not exceeding forty shillings," or, in discretion of court, one month's imprisonment.

S. 13. Penalty for permitting drunkenness on licensed premises (*f*), or selling liquor to drunken person (*g*). £10 for first offence, £20 second and subsequent offences.

(*c*) A person so "found" can now be "apprehended." See Licensing Act, 1902, s. 1.

(*d*) A licensed house is a private place after the place is closed to the public. A publican cannot therefore be convicted of being found drunk on his own licensed premises after the house is closed (*Lester* v. *Torrens* (1877), 41 J. P. 821; 25 W. R. 694).

(*e*) *E.g.*, noisy, turbulent, or uproarious conduct.

(*f*) A female was found drunk in a taproom with beer before her. Landlord proved that on entering his house there was nothing to show that she was drunk. The Queen's Bench Division held justices were right in dismissing information (*Somerset* v. *Wade* (1894), 58 J. P. 231; 63 L. J. 126); but now by Licensing Act, 1902, licensee is required to take all "reasonable steps" to prevent the drunkenness. For the offence of selling to a drunken person a publican is liable, although the fact that the person was drunk was unknown to him or his servants (*Cundy* v. *Lecocq*, 13 Q. B. D. 207; 48 J. P. 599; 53 L. J. 125). It is only a ground for mitigation of punishment where he does not know or has not reasonable means of knowing person served is drunk. See also *Commissioner of Police* v. *Cartmore* (1896), 60 J. P. 357. A licensed person cannot be convicted under this section for being drunk on his own premises (*Warden* v. *Pye*, 41 J. P. 120), and charge should be under s. 12.

(*g*) As to the case of a sober man ordering liquor for a drunken person, see *Scatchard* v. *Johnson* (1889), 52 J. P. 389.

S. 14. *Penalty for keeping disorderly house.*—"If any licensed person knowingly permits his premises to be the habitual resort of or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, he shall, if he allow them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds."

S. 15.—Penalty for permitting premises to be a brothel, £20, and forfeiture of licence and disqualification.

S. 16. *Penalty for harbouring constable.*—"If any licensed person—

"(1) Knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or

"(2) Supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty (*h*) unless by authority of some superior officer of such constable; or

"(3) Bribes or attempts to bribe any constable,

"he shall be liable to a penalty not exceeding, for the first offence ten pounds, and not exceeding for the second or any subsequent offence twenty pounds . . . ."

S. 17. *Gaming.* — Permitting gaming. See heading "Gaming on Licensed Premises," title "Betting and Gaming," *ante*, p. 183.

S. 18. *Drunkards.*—As to power to exclude drunkards from licensed premises, see p. 325, GENERAL SUBJECTS, *ante*. ". . . . Any such person who upon being requested in pursuance of this section by such licensed person, or his agent or servant, or any constable, to quit such premises, refuses or fails so to do, shall be liable to a penalty not exceeding five pounds, and all constables are required on the demand of such licensed person, agent, or servant to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose . . . ."

Ss. 19 to 22 of Act, which dealt with "adulteration," are now repealed (*i*) (Licensing Act, 1874, s. 33).

S. 23. *Closing licensed premises in case of riot.*—"Any two justices of the peace acting for any county or place where any riot or tumult happens or is expected to happen may order every licensed person in or near the place where such riot or tumult happens or is expected to happen to close his premises during any time which the justices may order; and any person who keeps open his premises for the sale of intoxicating liquors during any time at which the justices have ordered them to be closed shall be liable to a penalty not exceeding fifty pounds; and it shall be lawful for any person acting by order of any justices to use such force as may be necessary for the purpose of closing such premises."

(*h*) See *Mullins* v. *Collins*, 38 J. P. 84, and *Sherras* v. *De Rutzen* (1895), 59 J. P. 440.

(*i*) The offences enumerated in the section are now dealt with under the Sale of Food and Drugs Act, 1879. See title, "Food and Drugs (Sale of)," GENERAL SUBJECTS, *ante*, pp. 260, 270.

S. 24. *Closing of premises.*—This section is now repealed, the matter being dealt with under s. 3 of Licensing Act, 1874. See heading "Closing hours," title "Licensing Laws," GENERAL SUBJECTS, *ante*, p. 325.

S. 25.—Penalty on person found on premises during closing hours, 40*s*. As to "*bonâ fide* travellers," see heading, "*Bonâ Fide* Traveller," GENERAL SUBJECTS, p. 326, *ante*. "Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false evidence with respect to such name and address, shall be liable to a penalty not exceeding five pounds. Every person who by falsely representing himself to be a traveller or a lodger buys or obtains or attempts to buy or obtain at any premises any intoxicating liquor during the period during which such premises are closed in pursuance of this Act shall be liable to a penalty not exceeding five pounds."

S. 26.—Exemption from closing by order of (*j*) local authority in respect of certain trades (*k*). See heading, "Exemption Order," GENERAL SUBJECTS, p. 329, *ante*.

Ss. 27 to 29 apply to refreshment houses (*l*).

S. 29.—Local authority may grant occasional licences exempting from provisions relating to closing during certain hours (*m*) on any "special occasion or occasions." See p. 329.

Ss. 30, 33, and 34 [*Repeated convictions, disqualification of premises, etc.*] are repealed by Licensing Act, 1902, s. 33.

S. 31 is also repealed except as to disqualification of premises under certain circumstances.

S. 32.—"A conviction for any offence under this Act shall not after five years from the date of such conviction be receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture."

S. 35 *Entry on premises*] is repealed by s. 33 of Licensing Act, 1874, but is re-enacted by s. 16 of that Act.

S. 36. *Registers.*—"There shall be kept in every licensing district by the clerk of the licensing justices of that district a register, to be called

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(*j*) The "local authority" (outside London and metropolitan district) to consist of two justices in petty session assembled. Exemption order must be affixed to premises.

(*k*) The exemption in favour of theatres referred to in section is repealed. See s. 4, Licensing Act, 1874.

(*l*) Intoxicating liquors not to be drunk at refreshment houses during hours where house would be closed if it were an inn (s. 27). Section 28 amends law as to refreshment houses—houses to be closed at 10 P.M. (or 9 P.M. if that be hour for closing inns in locality).

(*m*) A difference of opinion exists as to what is a "special occasion." Some persons contend that the discretion of the local authority is limited to the grant of a licence for a special entertainment in the licensed house, such as a ball or club supper; others consider that a public holiday is also a special occasion, and this appears to be the opinion of the Home Office. See 46 J. P. 776.

the register of licences (*n*). . . . There shall also be entered on the register all forfeitures of licences, disqualifications of premises, records of convictions, and other matters relating to the licences on the register . . . ." See also heading "REGISTERS," GENERAL SUBJECTS, *ante*, p. 330.

AMENDMENT OF LAW AS TO GRANT OF LICENCES.

Ss. 37 to 44 relate to licensing committees in counties (*o*) and boroughs (*p*) and regulations as to new licences and renewals of licences. See p. 330, "Licensing Laws," GENERAL SUBJECTS, *ante*, and headings "New Licences," "Renewals," "Transfers," pp. 312, 313, 316, *ante*.

S. 41.—Amendment of 5 & 6 Vict. c. 44, with respect to licences "wilfully withheld by the holder thereof" (*q*).

S. 42.—Provisions as to renewal of licenses (*r*).

Ss. 45 to 47.—As to "annual value" of premises and value qualification for licence. The premises, unless such premises are a railway refreshment-room, shall be of not less than the following annual value: If situated in London or within town of 100,000 inhabitants, £50 per annum; or, if licence do not authorise sale of spirits, £30. If situated elsewhere and within town of less than 10,000 inhabitants, £30 per annum (£20 if not for spirits). If situated elsewhere and not within limit of any such town as above mentioned, £15 per annum (£12 if not for spirits). "The premises shall be, in the opinion of the licensing authority, structurally adapted (*s*) to the class of licence for which a certificate is sought."

S. 46.—As to "annual value" in case of licences granted under the Wine and Beerhouse Acts, 1869 and 1870.

S. 48.—Regulations as to form of licences (*t*).

S. 49.—Provisions as to six-day licences. See p. 330, *ante*.

S. 50. *Removal of licences.*—"Licences may be removed from one part of a licensing district to another part of the same district, or from one licensing district to another licensing district within the same county . . . ."

S. 51. *Legal proceedings.*—As to summary proceedings for offences under this Act, etc., see p. 331, *ante*.

S. 52.—Appeal to quarter sessions.

(*n*) The register is open to the inspection of officers of police and inland revenue, and to ratepayers, owners of licensed premises, and licensees on payment of fee 1*s*.

(*o*) The powers of county licensing committees are now transferred to quarter sessions. See Licensing Act, 1904, s. 4, and s. 5 (2).

(*p*) See s. 5 (4) of Licensing Act, 1904.

(*q*) A "copy" of same can be accepted in same manner as if licence were "lost or mislaid."

(*r*) Applicant need not attend in person at licensing sessions except specially required to do so. Justices shall not entertain any objection to renewal of licence unless written notice has been served on holder; justices can only receive evidence on oath.

(*s*) If licence be for spirits, house must contain two public rooms; if not for spirits, one room.

(*t*) Licences shall be in form prescribed by Secretary of State.

S. 53. *Continuance of licence pending appeal.*—"Where the justices refuse to renew a licence, and an appeal against such refusal is duly made, and such licence expires before the appeal is determined, the Commissioners of Inland Revenue may, by order, permit the person whose licence is refused to carry on his business during the pendency of the appeal upon such conditions as they think just; and, subject to such conditions, any person so permitted may, during the continuance of such order, carry on his business in the same manner as if the renewal of the licence had not been refused . . . ." Similarly in cases where licence is forfeited and conviction has been appealed against.

Ss. 54 and 55.—As to convictions and records of commitments.

S. 56.—As to protection of owners of licensed premises in cases of offences committed by tenants.

S. 57.—This section is repealed by Licensing Act, 1902, s. 33.

S. 58.—Evidence of register, etc.

S. 59.—Saving for indictments, etc., under other Acts.

MISCELLANEOUS.

Ss. 60 to 71 relate to miscellaneous matters — Disqualification; Jurisdiction; Evidence of Sale, etc. See p. 331, *ante*, under heading "Miscellaneous."

S. 60.—No justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Licensing Acts, except in cases of offences against public order (s. 12 of Act), and ss. 1 and 2 of Licensing Act, 1902, ". . . . who is . . . . in partnership with or holds any share in any company (*u*) which is a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in the district or districts adjoining to that in which such justice usually acts."

S. 61.—Extension of jurisdiction of justices over river or water, etc.

S. 62.—*Evidence of sale.*—"In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed or any intoxicating liquor was actually consumed, if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; . . . ."

S. 66. *Moiety of penalties.*—"Any part not exceeding a moiety of any penalty recovered under this Act may, if the court shall so direct, be paid to the superannuation fund of the police establishment within whose jurisdiction the offence in respect of which such penalties are imposed shall have occurred."

S. 67.—This section—as to mitigation of penalties—is repealed by s. 12 of Licensing Act, 1874.

(*u*) If interest be only legal and not beneficial it does not disqualify.

S. 69. *Liqueurs.*—"A license for the sale of liqueurs (*x*) or spirits by retail not to be consumed on the premises may, where such licence is required by this Act, be granted in the same manner in all respects in which a licence for selling wine not to be consumed on the premises may by law be granted, and an application for such a licence shall not be refused except upon one or more of the grounds on which a certificate in respect of a licence to sell by retail beer, cider, or wine not to be consumed on the premises may be refused: . . . ."

S. 70.—"All notices and documents required by this Act to be served or sent may, unless otherwise expressly provided, be served and sent by post . . . ."

S. 72. *Saving clauses.*—As to saving of certain privileges, rights, etc.

S. 73.—Licence as defined by this Act not required for certain retail sales, by wine merchants, wholesale spirit dealers, etc.

S. 74. *Definitions.*—The section defines various terms used in the Act. "'Intoxicating liquor' means spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without a licence (*y*) from the Commissioners of Inland Revenue."

S. 75. *Repeal.*—Repeal of Acts mentioned in Second Schedule (*z*).

APPLICATION OF ACT TO IRELAND.

The remaining sections of Act apply to Ireland.

SCHEDULES.

First Schedule relates to "adulteration,"—ss. 19 to 22 of Act, which are repealed by Licensing Act, 1874. See. p. 458.

Second Schedule gives list of Acts (fifteen in number) certain sections of which are repealed. 18 & 19 Vict. c. 118, and 34 & 35 Vict. c. 88 are wholly repealed, and 11 & 12 Vict. c. 49 so far as it affects England.

(*x*) See now Licensing Act, 1902, s. 10.

(*y*) See now Licensing Act, 1902, s. 10.

(*z*) *Billiard licenses.*—The section contains a proviso as to billiard licenses applied for under 8 & 9 Vict. c. 109. The same notices, *re* application for licences, are to be given as are required in the cases of licences (for sale of intoxicating liquor) defined by Act (Licensing Act, 1872).

LICENSING ACT, 1874.

(37 & 38 Vict. c. 49.)

An Act to amend the Laws relating to the sale and consumption of Intoxicating Liquors.

Ss. 1, 2.—Construction and short title of Act. Commencement, etc.

HOURS OF CLOSING.

S. 3.—Hours of closing premises licensed for sale of intoxicating liquors. See heading "Closing Hours," title "Licensing Laws," GENERAL SUBJECTS, *ante*, p. 325.

"Such premises wherever situate shall, save as herein-after mentioned, be closed on Sunday afternoon from three or half-past two according as the hour of opening shall be one o'clock in the afternoon or half an hour after noon until six o'clock.

"Such premises wherever situate shall be closed on Christmas Day and Good Friday and on the days preceding Christmas Day and Good Friday respectively, as if Christmas Day and Good Friday were respectively Sunday, and the preceding days were respectively Saturday, but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas Day immediately precedes or succeeds Sunday."

S. 4.—Exemptions as to theatres repealed. See p. 329, *ante*, and s. 26 of Licensing Act, 1872.

S. 5.—The grant of an order of exemption under s. 26 of Licensing Act, 1874, may be made to any person licensed to sell beer or cider by retail, to be consumed upon the premises, as well as to any licensed victualler or licensed keeper of a refreshment house.

S. 6.—Power to vary on Sunday afternoon hours of closing premises for sale of intoxicating liquors. See p. 326.

S. 7.—As to early-closing licences.

S. 8.—As to remission of duty in case of six-day and early-closing licence.

S. 9.—Penalty for infringing Act as to hours of closing: for first offence £10, for any subsequent offence £20.

S. 10.—Saving as to *bonâ fide* travellers and lodgers. See p. 326.

"Nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to bonâ fide travellers or to persons lodging in his house: Provided, that no person holding a six-day license shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house.

"Nothing in this Act contained as to hours of closing shall preclude the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad.

. . . . .

"A person for the purposes of this Act and the principal Act shall not be deemed to be a bonâ fide traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare."

S. 11.—As to hours of closing night houses.

RECORD OF CONVICTIONS AND PENALTIES.

S. 12.—Mitigation of penalties (*a*).

S. 13, as to record of convictions on licences, is repealed by Licensing Act, 1902.

S. 14, as to record of conviction for adulteration, is repealed by Licensing Act, 1902.

S. 15.—Temporary continuance of licences forfeited.

Where any licensed person is convicted for the first time of certain offences against Act or of any felony, and in consequence either becomes personally disqualified or has his licence forfeited, application may be made to a court of summary jurisdiction for authority to carry on the same business on the same premises until the next special sessions for licensing purposes.

REGULATIONS AS TO ENTRY ON PREMISES.

S. 16.—"Any constable may, for the purposes of preventing or detecting the violation of any of the provisions of the principal Act or this Act which it is his duty to enforce, at all times enter on any licensed premises, or any premises in respect of which an occasional licence is in force.

"Every person who, by himself, or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit any constable in the execution of his duty demanding to enter in pursuance of this section, shall be liable to a penalty not exceeding for the first offence five pounds, and not exceeding for the second and every subsequent offence ten pounds."

S. 17.—As to search warrant for detection of liquors sold or kept contrary to law.

"Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding five pounds."

OCCASIONAL LICENCES.

S. 18.—As to occasional licences required at fairs and races. See p. 329, *ante*.

S. 19.—Occasional licences—extension of time for closing. See p. 329, *ante*.

S. 20.—Offences on premises with occasional licence.

MISCELLANEOUS.

S. 21.—As to supply of deficiency in quota of borough justices on joint committee.

S. 22.—As to provisional grant and confirmation of licences to new premises.

S. 23.—"Separate licences of justices shall not be required in the case of separate excise licences, ..."

(*a*) Court may not, except in the case of a first offence, reduce the penalty to less than 20*s*.

S. 24.—As to license to sell any intoxicating liquor for consumption only off the premises not requiring confirmation, is repealed by Licensing Act, 1902,

S. 25.—Joint committee to make rules under s. 43 of principal Act.

S. 26.—As to notices of adjourned brewster sessions and of intention to oppose.

"Whereas by section forty-two of the principal Act it is enacted that a licensed person applying for the renewal of his license need not attend in person at the general annual licensing meeting unless he is required by the licensing justices so to attend: Be it enacted, that such requisition shall not be made, save for some special cause personal to the licensed person to whom such requisition is sent.

. . . . . .

"A notice of an intention to oppose the renewal of a license served under section forty-two of the principal Act shall not be valid unless it states in general terms the grounds on which the renewal of such license is to be opposed."

S. 27.—As to appeals to quarter sessions in certain cases.

S. 28.—Substitution of licensing justices for Commissioners of Inland Revenue as respects certain notices.

S. 29. *Definition of term "owner."*—"Any person possessing an estate or interest in premises licensed for the sale of intoxicating liquors, whether as owner, lessee, or mortgagee, prior or paramount to that of the immediate occupier, shall, on payment of a fee of one shilling to the clerk of the licensing justices, be entitled to be registered as owner or one of the owners of such premises."

S. 30. *Private friends.*—"No person keeping a house licensed under this or the principal Act shall be liable to any penalty for supplying intoxicating liquors, after the hours of closing, to private friends bonâ fide entertained by him at his own expense."

DEFINITIONS AND REPEAL.

S. 32.—As to definitions of "town" and "populous place," see p. 325, *ante*; as to "metropolitan district," see Schedule to Act.

S. 33. *Repeal.*—"There are hereby repealed the sections of the principal Act relating to the following matters; that is to say,

"(1) Sections nineteen to twenty-two, both inclusive, relating to adulteration, and the First Schedule to the principal Act;

"(2) Section twenty-four, relating to hours of closing; and

"(3) Section thirty-five, relating to entry on premises by constables; and

"(4) So much of sections five, six, thirteen, fourteen, sixteen, seventeen, and twenty-eight as relates to the records of convictions on licenses, and of section seventy-four as contains the definition of a town for the purposes of the provisions with respect to closing and of a new license.

"(5) The last paragraph of section fifty-six, beginning with the words 'In a county the justices' to the end of the section."

SCHEDULE.

Metropolitan District (*s.* 32 *of Act*).

"The city of London or the liberties thereof, or any parish or place for the time being subject to the jurisdiction of the Metropolitan Board of Works, or within the area contained within a circle the radius of which is four miles from Charing Cross."

LICENSING ACTS, 1902—1904.

As to Licensing Act, 1902, see p. 333, *ante*.
As to Licensing Act, 1904, see p. 53, *ante*.
See also title "Licensing Laws," pp. 318—322, *re* alehouses, beer-houses, refreshment houses, etc.

POLICE ACTS.

COUNTY POLICE ACT, 1839.
(2 & 3 Vict. c. 93.)

An Act for the Establishment of County and District Constables by the Authority of Justices of the Peace.

Ss. 1 and 2 set forth the preliminary steps to be taken for the establishment of police forces in counties.

It is provided under s. 1 that the number of constables appointed shall not be more than one man for every 1,000 inhabitants (*b*).

S. 3 enacts that in the first instance certain rules (*c*) shall be made by the Secretary of State, and such rules may be amended or added to, and such rules shall be binding on all persons concerned, copies thereof to be laid before Parliament.

Appointment of chief constable.—S. 4 provides for the appointment of a chief constable: ". . . . the justices of the county in general or quarter sessions assembled, or at any adjournment thereof, shall, subject to the approval of the Secretary of State, appoint a person duly qualified according to the rules to be chief constable of the county, and in every case of vacancy of the office shall, subject to the like approval, appoint another fit person in his room; and every chief constable so to be appointed may hold his office until dismissed by the justices in general or quarter session assembled, or at any adjournment thereof: . . . ." A proviso provides for appointment of two chief constables in certain counties (*d*).

(*b*) In 19 & 20 Vict. c. 69, s. 1, no such restriction is to be found. It is open to contention whether justices are not at liberty to appoint any number of constables.

(*c*) See Chap. VII., "CONSTABLES," *ante*, p. 133.

(*d*) For the appointment of one chief constable for two counties, see 20 Vict. c. 2, s. 2, and Local Government Act, 1888, s. 9 (1).

Chief constable to appoint petty constables.—S. 6 enacts that "Subject to the approval of two or more of the justices of the county in petty sessions assembled, the chief constable shall appoint the other constables to be appointed for the county, and a superintendent to be at the head of the constables in each division of the county, and at his pleasure may dismiss all or any of them, and shall have the general disposition and government of all the constables so to be appointed, subject to such lawful orders as he may receive from the justices in general or quarter session assembled, or at any adjournment thereof, and to the rules established for the government of the force."

Appointment of deputy chief constable.—S. 7 provides that "The chief constable shall, subject to the approval of the justices in general or quarter sessions assembled, or at any adjournment thereof, appoint one of the superintendents to act as his deputy in case of his being incapable, from illness or necessary absence from the county, to perform the duties of chief constable of the county; and the deputy so appointed shall in such case as aforesaid, and also in cases of any vacancy of the office of chief constable by death or otherwise, have all the powers, privileges, and duties of the chief constable: Provided always, that no deputy chief constable shall be capable of continuing to act with the powers of chief constable during any vacancy of the office for more than three calendar months after the vacancy has been occasioned."

Authority as special constables under 1 *&* 2 *Will.* 4, *c.* 41.—S. 8 enacts that "The chief constable and other persons so appointed shall be sworn as constables before a justice of the county, and shall have all the powers, privileges, and duties throughout the county, and also in all liberties and franchises and detached parts of other counties locally situated within such county, and also in any county adjoining to the county for which they are appointed, which any constable duly appointed has within his constablewick by virtue of the common law, or of any statute made or to be made . . ."; the provisions of 1 & 2 Will. 4, c. 41, shall be deemed to extend to the constables appointed under this Act, except as to manner of appointment, etc., or any matter otherwise provided for by this Act.

Other employment, etc.—S. 10 enacts that all chief or other constables appointed under this Act are restrained from employing themselves in any office or employment for hire or gain other than in their execution of duties under this Act.

Penalty for neglect of duty.—S. 12 enacts that any constable who shall be guilty of any neglect or violation of duty shall, on conviction before two justices, be liable to a penalty of £10.

Accoutrements, etc., delivery of.—S 14 enacts that every constable who shall be dismissed from or shall cease to hold office and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty to the chief constable or superintendent, or to such person as the chief constable may direct, shall be liable, on conviction before two justices, to imprisonment for one month, and warrant may issue for search for and seizure of such clothing, accoutrements, etc.

Assuming dress of constable, etc.—S. 15 enacts that every person, not being a constable appointed under this Act, who shall be in unlawful possession of police clothing or appointments, or who shall put on the dress, or take the name, designation, or character of any constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do of his own authority, or for any other unlawful purpose, shall be liable, on conviction before justices, to a penalty of £10 in addition to any other punishment to which he may be liable.

Publicans harbouring police.—S. 16 enacts that a penalty of £5 is imposed upon any publican, beerhouse keeper, etc., who shall knowingly harbour or entertain any constable during time appointed for his being on duty.

Quarter and petty sessions.—S. 17.—"Every chief constable, unless prevented by sufficient cause, shall attend every general and quarter session of the justices of the county, and at every adjournment thereof, and shall make quarterly reports to the justices of all matters which they shall require of him concerning the police of the county, and shall obey all lawful orders and warrants of the said justices in the execution of his duty; and the superintendents of divisions shall in like manner attend every sessions of the justices holden for their respective divisions, and shall make the like reports to the justices of such divisions."

Extraordinary expenses.—S. 18 provides that in addition to the salary to be paid to the chief constable, reasonable allowances shall be made to him for extraordinary expenses necessarily incurred by him, and by the constables under his orders, in the apprehension of offenders, and in the execution of duty.

COUNTY POLICE ACT, 1840.
(3 & 4 Vict. c. 88.)

An Act to amend the Police Act, 1839 (2 & 3 Vict. c. 93).

Exemption from toll.—S. 1 enacts that no toll shall be taken on any turnpike road or bridge for any horse, carriage, or cart in the service of the police; provided that the constable in charge (if not the chief constable) shall produce an order in writing under the hand of the chief constable, or shall have his dress according to regulation.

Outlying districts.—S. 2 (*e*).—As to detached parts of counties and transference of outlying districts.

Police rate.—S. 3 authorises the making of a police rate.

S. 4 defines how rateable property is to be valued.

S. 5, as to levying of police and county rates.

Ss. 6, 7, 8, and 9 contain further provisions regarding police rates.

(*e*) See also 7 & 8 Vict. c. 61, and 21 & 22 Vict. c. 68.

Superannuation.—S. 10 (superannuation) is repealed by the Police Act, 1890, as is also s. 11 (rate of superannuation). See also p. 473.

Station houses and strong rooms (*f*).—S. 12 enacts that it shall be lawful for the justices in quarter sessions assembled (now standing joint committee) of any county, if they think fit, to order that station houses or strong rooms, for the temporary confinement of persons taken into custody by the police, be provided upon plans as approved by Secretary of State, and for that purpose to purchase and hold lands and tenements or to appropriate tenements belonging to the county, the expense to be defrayed out of police rates. See also s. 22 of 19 & 20 Vict. c. 69.

Money may be borrowed on credit of rate.—Under s. 13 authority is given to borrow money for purpose of above section on credit of police rates, to be repaid by yearly instalments.

Ss. 14, 15.—*As to consolidation of county and borough police.*—The chief constable of the county shall have the general disposition and government of the constables so consolidated, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them. No borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough without the consent of the chief constable. The sanction of the Secretary of State is required before the agreement can be terminated (19 & 20 Vict. c. 69, ss. 20, 21, 23).

Fees.—Ss. 16—18.—These sections are repealed by s. 28 of 22 & 23 Vict. c. 32; s. 36, 53 & 54 Vict. c. 45; c. 14, 56 & 57 Vict.; but the power of justices (now standing joint committee) to settle tables of fees is retained.

Additional constables.—S. 19 enacts that it shall be lawful for the chief constable of any county, with the approval of the justices in quarter session assembled (now standing joint committee), if he shall think fit, on the application of any person or persons showing the necessity thereof, to appoint, and cause to be sworn in, any additional number of constables, at any place within the limits of his authority, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the chief constable, and for such time as he shall think fit; and every such constable shall have all the powers, privileges, and duties of other county constables.

Discontinuance. — Provided always that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constables so appointed shall be discontinued (*g*).

(*f*) 11 & 12 Vict. c. 101, provides for the expense of erecting and maintaining lock-up houses *on the borders* of counties.

(*g*) As to percentage for superannuation purposes, see Home Office Circulars, *post*. (Twenty per cent. on salaries is deemed fair contribution from employer towards pension fund.)

Number of superintendents.—S. 26 enacts that whereas it has been found unnecessary that a superintendent be appointed for every petty sessional division of a county, it shall be lawful for the justices (now standing joint committee), with the approval of the Secretary of State, to direct how many superintendents shall be appointed, and to direct the appointment of inspectors and sergeants and other subordinate officers, with such gradations of rank and pay and such variety of duties as shall be found expedient; and justices can make orders regarding the attendance of the officers at their sessions.

Ss. 27, 28.—As to division of a county into police districts, and expenses in districts.

Monthly returns (by chief constable).—S. 31.—"Every chief constable shall, on the first day of every month, transmit to the clerk of the peace for the county for which or for some district whereof such constable shall act, a return showing the actual disposition and number of the constabulary force of the county or district for which such constable shall act during the preceding month, which return shall specify the changes made from time to time in such force as well in number as by name, and shall distinguish by number and name the members of the police force of any other district serving within his district: and the clerk of the peace shall cause the said return to be laid before the justices at the next ensuing quarter sessions for examination."

(*By superintendents*).—S. 32.—"Every superintendent appointed under this Act shall, on the first day of every month, send to the chief constable a return showing the actual disposition and number of the constables of the county under his superintendence during the preceding month, which return shall specify the changes made from time to time therein, as well in number as by name; and the chief constable shall send a copy of all such returns to the clerk of the peace for the county, to be laid before the justices of the peace at their next general or quarter sessions of the peace."

S. 33. *Warrants of commitment.—How executed.*—It shall be lawful for the justice or justices by whom a warrant of commitment shall be signed to command the constable to whom the warrant is directed to convey and deliver the body of the person so committed with the warrant into the custody of such constable as shall be appointed by the regulations of the police force to take charge of persons so committed; and every constable into whose custody any such person shall be so delivered shall endorse upon the warrant a certificate of the delivery of such person into his custody, and the time and place of such delivery; and it shall be lawful for any constable into whose custody such person shall have been so delivered to complete the execution of the warrant, by conveying and delivering the body of such person either to the said gaol or house of correction or into the custody of such other constable as shall be appointed by the regulations of the police force to assist in taking charge of persons so committed.

COUNTY AND BOROUGH POLICE ACT, 1856.
(19 & 20 Vict. c. 69.)

To render more effectual the Police in Counties and Boroughs.

S. 1 enacts that a police force shall be established in every county.

S. 2 contains proviso *re* forces in course of establishment.

S. 3 provides for consolidation of divisional forces.

S. 4 provides for establishment, if required, of separate police districts in a county, extended by 22 & 23 Vict. c. 32, s. 1.

S. 5, terms of arrangement where boroughs are consolidated with counties.

S. 6. *Reciprocal powers of county and borough constables.*—The constables of every county shall have, in every borough situate wholly or in part within such county, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within the county, and shall obey the lawful commands of the justices within any such borough in which they shall be called on to act as constables.

S. 7. *Annual criminal statistics.*—By s. 14 the justices of every county and the watch committee of every borough shall, in October (now January) in every year, transmit to the Secretary of State a statement for year, of the number of offences reported to the police within such county or borough respectively, with particulars thereof. A classified abstract of returns to be laid before Parliament. But see now Police Returns Act, 1892.

Power to her Majesty to appoint inspectors.—By s. 15 it shall be lawful for her Majesty to appoint three persons as inspectors under this Act, to visit and inquire into the state and efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-up, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to the Secretary of State, who shall cause such reports to be laid before Parliament.

On certificate of Secretary of State, one-fourth (h) the charge for pay and clothing to be paid by Treasury.—By s. 16, upon the certificate of the Secretary of State that the police of any county or borough has been maintained in a state of efficiency in point of numbers and discipline for current year, it shall be lawful for the Commissioners of the Treasury to pay such sum towards the expenses of such police for the year mentioned in such certificate as shall not exceed one-fourth (*i*) of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under s. 19 of 3 & 4 Vict. c. 88.

(*h*) By 38 & 39 Vict. c. 48, the Police (Expenses) Act, 1875, this enactment so far as it limits the amount of contribution is repealed, and by the Police Act, 1890, is now put upon a different footing.

(*i*) All limit on amount of contribution by Treasury is removed by 38 & 39 Vict. c. 48. See now Police Act, 1890, *re* "Exchequer contribution."

COUNTY POLICE ACT, 1857.

(20 & 21 Vict. c. 2.)

To facilitate the Appointment of Chief Constables for adjoining counties.

After reciting 2 & 3 Vict. c. 93, s. 4. regarding appointment of the same chief constable for two or more adjoining counties, s. 2 of this Act empowers justices to appoint a person to be chief constable, although he may hold a similar appointment in an adjoining county (*k*).

COUNTY AND BOROUGH POLICE ACT, 1859.

(22 & 23 Vict. c. 32.)

To amend the Law concerning police in counties and boroughs.

S. 1 empowers justices to consolidate or merge police districts formed under 3 & 4 Vict. c. 88, and 19 & 20 Vict. c. 69.

S. 2.—*County constables not required to act in boroughs.*—No county constable shall be required to act in any borough having a separate police establishment, except in execution of warrants of justices of such county, or by the order of his chief constable or superintendent ; and in all cases of special emergency the chief constable or superintendent, when required so to do by the watch committee of any borough having a separate police establishment, shall have power to direct the county constables to act within such borough ; and no constable of any borough having a separate police establishment shall be required to act out of his borough, except in execution of warrants of justices of such borough, or in pursuance of directions from the watch committee.

Resigning without proper notice.—S. 4 repeals part of s. 13 of 2 & 3 Vict. c. 93, but provides that in case any constable shall resign or withdraw himself from his duty without such proper leave or notice such resignation or withdrawal shall be notified in writing, by the chief constable or by the superintendent under whom the offending constable may have been placed, to the treasurer of the county or the paymaster of the constabulary force, and all arrears of pay then due to such constable so resigning or withdrawing shall be forfeited ; and upon summary conviction of such offence before two justices, such constable shall be liable to a penalty not exceeding £5.

(*k*) 7 & 8 Vict. c. 61, and 21 & 22 Vict. c. 68, relate to *detached parts of counties.*

Gratuities may be granted to constables (*l*) for meritorious action (s. 24).

Chief constable empowered to suspend constables.—S. 26.—The chief constable of any county police force, and the watch committee of any city, borough, district, or place, is and are hereby empowered to suspend any constable within their respective jurisdiction, whom he or they shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same; and the said chief constable or watch committee is and are hereby also empowered, at his or their discretion, to fine any such constable in a sum of money not exceeding one week's pay, and to reduce the said constable from a superior to an inferior rank, such fine and reduction in rank to be in addition to any other punishment to which the said constable may be liable.

POLICE SUPERANNUATION ACT, 1865.

(28 & 29 Vict. c. 35.)

An Act to amend the Law relating to Police Superannuation Funds in Counties and Boroughs. [22nd June, 1865.]

This Act is practically repealed, except so far as s. 2 (regarding "short titles of Acts") relates to the County and Borough Police Act, 1859.

The Police Act, 1890, is now the principal Act affecting pensions.

Pensions were formerly granted, *at the discretion of justices* who were empowered to authorise the granting of a pension equal to *half pay* on completion of *fifteen* years' service, and *two-thirds pay* after *twenty* years.

RULES FOR COUNTY POLICE. See "CONSTABLES," p. 133, *ante*.

(*l*) This gratuity was formerly limited to "three pounds," but this is now altered by the Police Act, 1890, s. 24. Powers of quarter sessions are transferred to standing joint committee.

POLICE ACT, 1890.

(53 & 54 Vict. c. 45.)

Part I.

SUPERANNUATION OF CONSTABLES.

S. 1.—"Subject to the provisions of this Act, every constable in a police force—

"(a) If he has completed not less than twenty-five years approved service, . . . shall . . . (*a*) be entitled without a medical certificate to retire (*b*) and receive a pension for life; and,

"(b) If after he has completed fifteen years approved service he is incapacitated for the performance of his duty by infirmity of mind or body, shall be entitled on a medical certificate to retire and receive a pension for life; and,

"(c) If before he has completed fifteen years approved service he is incapacitated for the performance of his duty by infirmity of mind or body, shall be entitled on a medical certificate to retire, and thereupon the police authority may, if they think fit, grant him a gratuity; and,

"(d) If at any time he is incapacitated for the performance of his duty by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default, shall be entitled on a medical certificate to retire and receive a pension for life."

S. 2. *Widows and children.*—"If a constable dies whilst in a police force from the effect of an injury received in the execution of his duty without his own default, the police authority shall grant a pension to his widow, and allowances to his children."

If a constable dies "from any other cause," gratuities can be granted to widow and children.

If a constable pensioned through injury dies (from effects of injury) "within twelve months after the grant," a pension may be granted to his widow; or where a constable on pension dies (from any cause) "within twelve months after the grant of the pension," gratuities may be granted to widow and children.

S. 3. *Pension scale.*—"(1) The pensions, allowances, and gratuities granted to constables of a police force and to their widows and children shall be in accordance with the pension scale for the force.

"(2) The pension scale for a police force shall be—

"(a) As regards ordinary pensions, a fixed scale adopted (*c*) by the police authority within the maximum and minimum limits set forth in Part I. of the First Schedule to this Act; and

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(*a*) Subject to an age limit (if one be prescribed). See First Schedule to Act.

(*b*) Within four months of notice given.

(*c*) As to the adoption by a police authority of a new scale, see sub-s. (6) (s. 3).

"(b) As regards special pensions and allowances and gratuities, the scale set forth in Part II. of that Schedule."

. . . . . .

"(7) The rules contained in Part III. of the First Schedule to this Act shall apply to all pensions, allowances, and gratuities granted under this Act."

S. 4. *Reckoning service.*—"(1) The service of a constable for the purposes of this Act shall be subject to such deductions in respect of sickness, misconduct, or neglect of duty as may be made therefrom in pursuance of the regulations of the force to which the constable belongs; and the expression 'approved service' shall for the purposes of this Act mean such service (*d*) as may after such deductions as aforesaid (if any) be certified under the order of the police authority to have been diligent and faithful service, but shall not, unless the regulations of the police force otherwise prescribe, include service before twenty-one years of age.

"(2) A certificate signed by the chief officer of a police force as to the period of a constable's approved service in that force shall be sufficient evidence thereof.

"(3) Where a deduction is made from a constable's service . . . notice of the deduction shall . . . be given to the constable; and the constable may appeal to the chief officer of his police force against any act of an officer of police superior to the constable which prevents him from reckoning any period of actual service as approved service . . . ."

Removal.—"(4) Where a constable has served in more than one police force in any part of the United Kingdom, approved service in any such police force in which he has completed not less than three years approved service, and from which he has with the written sanction of the chief officer of that force removed (*e*) to another force, shall be reckoned as approved service in the force in which the constable is serving at the time of his retirement" (*f*).

Reservists.—Sub-s. (5) provides for cases of men belonging to Army Reserve serving in police forces reckoning service if called out for training, etc.

S. 5 (1). *Proof of incapacity.*—"Before granting to a constable an ordinary pension on the ground of his being incapacitated by infirmity for the performance of his duty, the police authority shall be satisfied by

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(*d*) As to service before twenty-one, see 55 J. P. 365.

(*e*) "Removal" must be with "sanction." It should be to a *specified* force (56 J. P. 412, 604, 735); also it should be *at once* carried out, or, if delayed, the constable should be "in course of removing" during the interval (55 J. P. 621). It is considered that a constable who resigns *without any intention* of entering another force, but who subsequently rejoins the police service, cannot be said to have "removed" within the meaning of the Act (55 J. P. 45, 90, 685, and 750). *Cant* v. *Lancashire Police Authority* is the first important case bearing on this matter; but see now *Garbutt* v. *Durham JJ.* (service broken by resignation).

(*f*) The provisions of this section and s. 30 (8) are similar in character. The latter, however, is a temporary measure to meet the case of "existing" constables.

the evidence of some legally qualified medical practitioner or practitioners, selected by the police authority, that the constable is so incapacitated, and that the incapacity is likely to be permanent."

Sub-s. (2) relates to applications for special pensions.

"(3) Where a pension is granted to a constable on the ground of incapacity . . . the police authority shall, yearly or otherwise, ... satisfy themselves that the incapacity continues . . ."

(4) In the event of the incapacity ceasing, the constable may be required to serve in the police force, "in a rank not less than the rank which he held before his retirement, and at a rate of pay not less than the rate which he received before his retirement."

"(7) If a constable fails or refuses, when required by the police authority, to be examined (*g*) by some legally qualified medical practitioner selected by that authority, the police authority may deal with the constable in all respects as if they were satisfied by the evidence of such a practitioner that the constable is not incapacitated for the performance of his duty or, as the case may be, is only partially disabled.

"(8) The decision of the police authority on the matters above in this section mentioned shall be final, save that in the case of a borough the constable may appeal to the council of the borough, and the decision of the council shall be final."

S. 6. *Power to reduce pension.*—"Where a constable retires on account of infirmity of mind or body, and the police authority are satisfied on medical evidence that the constable has brought about or contributed to the infirmity by his own default or his vicious habits, the police authority may, in their discretion, reduce the amount of his pension by an amount not exceeding one half of the pension to which he would be otherwise entitled."

S. 7. *Assignment of pensions.*—"The following provisions shall have effect with respect to every pension, allowance, and gratuity (in this section referred to as a "grant") payable by the police authority to any person (in this section referred to as the pensioner):

"(1) Every assignment of and charge on a grant, and every agreement to assign or charge a grant, shall, except so far as made for the benefit of the family of the pensioner, be void (*h*), and on the bankruptcy of the pensioner the grant shall not pass to any trustee or other person acting on behalf of the creditors."

S. 8. *Forfeiture of pension.*—"A pension or allowance . . . becomes forfeited . . .

"(a) If the grantee is convicted of any offence for which he is sentenced to penal servitude or to imprisonment for a term

(*g*) See 61 J. P. 4; *R.* v. *Lord Leigh and Others* (*Warwickshire*) (1896), 12 T. L. R. 545.

(*h*) The police authority can apply grant to repay guardians for parochial relief—to benefit any one pensioner is liable to maintain—towards expenses incurred by institution or person having care of pensioner, if insane, with surplus to wife or relatives (sub-ss. (2), (3), (4)). Sub-ss. (6), (7), (8) relate to payment to minors, receipts, probate, rules, etc.

exceeding three months with hard labour, or to imprisonment for a term exceeding twelve months, whether with or without hard labour; or

"(b) If the grantee knowingly associates with thieves or reputed thieves; or

"(c) If the grantee refuses to give to the police all information and assistance in his power, for the detection of crime, for the apprehension of criminals, and for the suppression of any disturbance of the public peace; or

"(d) If the grantee enters into or continues to carry on any business, occupation, or employment which is illegal, or in which he has made use of the fact of his former employment in the police in a manner which the police authority consider to be discreditable and improper. . . ."

S. 9.—As to punishment for obtaining pension by fraud, by means of false declaration, representation, personation, malingering, etc. Punishment: On summary conviction, imprisonment (four months) or fine (£25); on indictments, imprisonment (two years), and forfeiture of pension in either case.

S. 10. *Saving of right of dismissal, etc.*—"Nothing in this Act shall prejudice the existing right of any police authority to dismiss any constable, or to reduce him to any lower rank or lower rate of pay . . ."

S. 11. *As to appeal.*—Where a pension is forfeited or refused, a constable or his widow or child may apply to the police authority for a reconsideration of the claim, and, if aggrieved, may apply to the next court of quarter sessions. See also ss. 4, 5.

S. 12. *Application of Act to chief officer of police.*—Act to apply in like manner as to any other constable, except as to certificate of service and sanction to removal.

S. 13. *Suspension of pension.*—"(1) Where a constable in receipt of a pension . . . takes service in any police force, his pension may be suspended . . . in whole or in part. . . .

"(2) If a constable in receipt of a pension . . . is appointed to an office remunerated out of money provided by Parliament, or out of a county or borough rate or fund, he shall not, while holding that office, receive more of the pension than together with the remuneration of that office is equal to one and a half times the remuneration of the office in respect of which the pension was awarded."

S. 14. *Service in several capacities.*—"Where a person has served in two or all of the following capacities—

"(i) As a civil servant within the meaning of the Superannuation Act, 1887;

"(ii) In a police force with a salary paid out of the police fund;

"(iii) In a police force with a salary paid out of money provided by Parliament;

he shall be entitled to reckon his entire period of service (*i*) in both or all capacities for the purpose of pension. . . ."

(*i*) Three years of police service to be equivalent to four years' civil service, and conversely. The pension to be payable from money provided

S. 15. *Rateable deductions.*—"(1) The police authority of every police force (*j*) shall deduct from the pay of every constable in the force—

"(a) sums at a rate not exceeding two and a half per cent. per annum on his pay (in this Act referred to as the rateable deduction); and

"(b) such stoppages during sickness, and such fines for misconduct, as may be provided by the regulations respecting the force."

S. 16. *Pension fund.*—"There shall be a pension fund (*k*) of every police force, and there shall be carried to that fund the deductions (including stoppages and fines) made in pursuance of this Act from the pay of the constables in the force," and certain fines, fees (*l*) and other moneys enumerated in the section. There shall also be carried to the fund, unless the authority having control of the fund otherwise resolve—

"(h) The net sums received in the police area for pedlars and chimney sweepers certificates; and

"(i) All fees payable to or received by any constable (*m*) of the force in the execution of his duty as such, or in the execution of any other duty which may be required to be performed by any constable of the force; and

"(k) The fines imposed by a court of summary jurisdiction for offences under the Licensing Acts, 1872 and 1874, when committed within the police area, or for any offence under a general or local Act similar to any of the above offences."

S. 17. *Exchequer contribution.*—The annual grant out of Customs and Excise duties for police superannuation (*n*), referred to as "the Exchequer contribution," is to be distributed amongst the police forces of England and Wales (Metropolitan excepted) according to the following basis:

(a) To each police authority "a sum equal to the amount of the rateable deductions made during the year" (ending September 29th).

(b) The residue to be distributed proportionately to the amounts paid by each authority for year (ending September 29th) "in respect of pensions, allowances, and gratuities out of their pension funds respectively."

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by Parliament and pension fund proportionately. The section is not applicable to service in Army or Navy. See also s. 26 of Act.

(*j*) Sub-s. (2) provides for cases of "removal" (see s. 4 of Act) from one force to another; in such cases the amount paid to be "apportioned" between the police authorities. See note to s. 4.

(*k*) See s. 33 (1).

(*l*) (*Fees*).—Paragraph (c) in section 16 deals with the question of "fees," and is evidently intended to keep alive power of courts of summary jurisdiction under s. 66 of the Licensing Act, 1872. See 56 J. P. 349, 379; 57 J. P. 60.

(*Local Acts*).—55 J. P. 139, 334, 398, and 56 J. P. 37 also bear upon this question and the question of payments under local Acts.

(*m*) Includes fees received by inspectors of weights and measures in counties where police act as such (55 J. P. 267).

(*n*) No payment is to be made to a police authority unless the Secretary of State gives his certificate as to efficiency of force.

Sub-ss. (3), (4), (5), (6) of section 17 relate to powers of Secretary of State *re* withholding of certificate, basis of distribution, etc.

S. 18. *Accounts and investment of pension fund.*—"All sums which, in pursuance of this Act, are to be carried to the pension fund of a police force shall be accounted for and paid to the treasurer of that fund in such manner as the police authority may direct, and may be dealt with as annual income (*o*) of the pension fund."

"(3) At the end of each financial year the surplus of the annual income of the pension fund above the expenditure thereout shall, as soon as may be, be invested in such name as the police authority (*p*) direct . . . ."

"(4) The capital of the pension fund shall not be applied for paying any sums payable out of that fund."

S. 19. *Guarantee of pension fund.*—"(1) If at any time the annual income (*q*) of the pension fund is insufficient to pay the expenses of managing the fund, and the pensions, allowances, gratuities, and other sums payable thereout, the deficiency shall be supplied out of the police fund."

Sub-sections (2), (3), (4). — Provisions as to deficiencies in special cases.

S. 20. *Power to make regulations.*—"(1) Every police authority may make regulations consistent with this Act with respect to the deductions from a constable's service for sickness, misconduct, or neglect of duty, and with respect to stoppages of pay during sickness and fines for misconduct, and with respect to the mode in which pensions are to be paid (*r*), and otherwise for the purpose of giving effect to the provisions of this Act."

S. 21. *Power to return deductions.*—"If a constable not having been dismissed leaves a police force without a pension or gratuity, the police authority may, if it seems to them just, pay him the whole or part of the rateable deductions (*s*) which have been made from his pay; but this section shall not apply in the case of his being removed to another force under such circumstances as will enable him to reckon his approved service in the force from which he removes."

S. 22. *Provisional Orders.*— The police authority may apply to the Secretary of State for a Provisional Order to deal with pension fund.

Where the assets of pension fund exceed amount required to meet liabilities—in such case "investments" may be discontinued.

Where a local Act provides for payment to a "special" force (*t*) it is necessary to adjust financial relations between the police authority and such special force.

(*o*) The *capital* of the pension fund shall not be applied for paying any sums payable out of that fund (sub-s. (4)). S. 33 bears largely upon this section as to power of county council and standing joint committee. See also 54 J. P. 182; 55 J. P. 267, 316.

(*p*) The section is extended by Police Act, 1893, s. 5.

(*q*) See s. 18, note (*a*).

(*r*) See ss. 15 (1), 16 (1), and s. 4 (1) also, Home Office Circular (Pensions), 1890.

(*s*) Cannot be claimed as a matter of right.

(*t*) By the Police Act, 1893, s. 1, constables employed on fire duty shall be deemed to be engaged on police duty and entitled to pension if injured,

"(7) For the purposes of this section the expression "special force" (*u*) means a fire brigade, fire police, or other like force." See also s. 36.

Part II.

GENERAL AMENDMENT OF ACTS.

S. 23. *Fees.*—"(1) Every police authority may from time to time, and shall at least once in every five years, submit for approval to a Secretary of State a table of fees payable to constables (*v*) in respect of the service of summonses, the execution of warrants, and the performance of other occasional duties which may be required of the constables under that authority . . . ."

S. 24. *Repeal.*—"So much of the County and Borough Police Act, 1859, as limits the amount of the gratuity (*w*) which may be granted as a reward for a meritorious act done by a constable in the execution of his duty is hereby repealed."

S. 25. *Police aid.*—"(1.) Where a police authority deem it expedient for any special emergency or under any exceptional circumstances to strengthen their police force (in this section referred to as the aided force) by constables belonging to another police force, such number of constables belonging to the latter force may be added to the aided force, and for such period, as may be agreed on between the police authorities of the forces; and the constables so added, notwithstanding that they have not been sworn in or taken any declaration as constables of the aided force, shall, during that period, be deemed, save as otherwise provided by the agreement, to be for all purposes constables of the aided force (*y*), and shall have the like powers, duties, and privileges."

The agreement may be made for a particular occasion (*z*) or as a standing agreement.

The police authority may delegate to their chief officer the power conferred upon them by this section.

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a fair "contribution" to be made from the fire brigade or fire police fund to the police pension fund.

The Police Act, 1890, is further amended by the Police Act, 1893, as regards suspension of pensions (s. 13); investment of pension fund (s. 18); increase of pension granted under special scale, Sched. I. (11) (e). As to service "in more than one rank," see Police Act, 1893, *post*.

(*u*) See note (*t*), *ante*, p. 479.

(*v*) See also Home Office Circular, August, 1893. Fees are to be duly accounted for and applied as provided. As to definition of "fee," see ss. 16, 34, 36.

(*w*) Under the repealed section the amount of gratuity was limited to £3.

(*y*) These words empower the "aiding" constables to act as constables of the "aided force." Without such provision they would have to be sworn in as constables for the aided force, but the words do not operate to make aided authority liable for pensions (56 J. P. 287).

(*z*) It might be made by telegram on an emergency. See also Home Office Circular, August, 1893, *post*.

The agreement may contain such terms as to the command of the constables added, and as to expenses, pay, pensions, etc., as may be deemed expedient (*a*).

An agreement may be made by a police authority with more police authorities than one.

S. 26. *Declaration as to previous service.*—A constable on appointment may be required to make a declaration as to previous service. See Second Schedule to Act.

Ss. 27 to 29.—Apply to the metropolitan and city police.

Part III.

TEMPORARY AND SUPPLEMENTAL PROVISIONS.

S. 30. *Application of Act to existing funds and constables.*—The section contains ten sub-sections framed for the purpose of adapting the provisions of Part I. of Act to "existing" funds and constables (*b*). Sub-sections (1) to (5) deal with transfer and apportionment of funds. Sub-sections (6) and (7) relate to existing constables who decline to accept provisions of Act.

Sub-section (8) is important and is as follows:

"(8) In the case of any existing constable to whom this Act applies, his approved service for any period before the commencement of this Act in the force in which he is serving at the time of his retirement shall be reckoned as approved service (*c*): and his service for not less than three years either wholly or partly before the commencement of this Act in any police force in any part of the United Kingdom from which he removed with the sanction of the chief officer or police authority of that force to another force, shall (notwithstanding the sanction was not given in writing) be reckoned as approved service for the said period in the last-mentioned force, unless the police authority who give him the notice respecting the acceptance of this Act, inform him in writing at the time of such notice that they refuse to allow the said service to be reckoned, but their refusal shall not prevent the reckoning of that service under any other provision of this section."

(*a*) As to contribution by County Council, see Local Government Act, 1888, s. 24 (2), and *R.* v. *County Council of West Riding of Yorkshire*, 59 J. P. 104.

(*b*) Constables appointed and funds established before April 1st, 1891.

(*c*) These words appear to indicate that service *in the same force*, although it may not have been *continuous service*, can be counted towards pension (55 J. P. 13, 266), but it would appear that previous service in a force *other than that* from which the constable is retiring must extend over three years (56 J. P. 735, 412; see also 54 J. P. 813).

Continuous service.—In order to entitle a constable to reckon previous service *as a matter of right*, the Act seems to contemplate that the service should be *continuous*, special provisions being made (ss. 4, 5) for unavoidable absence and breaks in service, but the police authority is not *prohibited* by Act from certifying any service as approved service (56 J. P. 812; 57 J. P. 11).

Sub-section (9).—As to "existing" constables with ten years' service belonging to a force with special pension scale.

Sub-section (10).—As to reduction of pensions in special cases in event of non-payment of rateable deductions by constables.

S. 31.—"The provisions of this Act shall have effect, notwithstanding anything in any other Act, general or local, to the contrary."

S. 32.—Provisions of Act to apply to Metropolitan Police subject to proviso as to pensions of chief commissioner and other officials.

S. 33. *Terms defined.*—"In this Act, unless the context otherwise requires, the expression 'police area' means one of the areas set forth in the first column of the Third Schedule to this Act: . . . ."

The expressions "police authority," "chief officer of police," "police fund," and "police force," are also defined in Schedule.

S. 34.—The section defines expressions "treasurer," "fine," "fee," etc.

"The expression 'fee' does not include any reward paid to an individual constable by direction of the Admiralty, or of any military authority, or of a Secretary of State not acting as the police authority, or any gratuity paid to a constable for a meritorious act done in the execution of his duty."

S. 35. *Existing pensioners.*—Saving clause for existing pensions.

S. 36. *Repeal.*—As to Acts repealed, see Fourth Schedule of Act.

Fire police.—"(4) Nothing in this section shall repeal any enactment so far as it relates to any fire brigade, fire police, or other force to which or to the members whereof the provisions of this Act do not apply."

S. 37.—Commencement of Act, April 1st, 1891.

S. 38. *Short titles.*—"(1.) This Act may be cited as the Police Act, 1890.

"(2.) The Acts mentioned in the Fifth Schedule to this Act are in this Act referred to and may be cited by the short titles respectively in that Schedule mentioned, and may be cited collectively by the short title at the commencement of that Schedule mentioned.

"(3.) The Metropolitan Police Acts, 1829 to 1887, and this Act may be cited together as the Metropolitan Police Acts, 1829 to 1890.

"(4.) The Acts mentioned in the said Fifth Schedule and this Act may be cited together as the Police Acts, 1839 to 1890."

S. 39. This Act shall not apply to the City of London Police.

S. 40. This Act shall not extend to Scotland or Ireland.

FIRST SCHEDULE.—PENSION SCALE.

Part I.

Ordinary pensions (*d*).—(1.) The pension to a constable on retirement shall be within the maximum and minimum limits.

(a) If he has completed fifteen but less than twenty-one years' approved service, an annual sum not less than 1-60th nor more than 1-50th of his annual pay for every *completed* year of approved service; and

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(*d*) Sections 1, 3, and 4 of Act and Part III. of Schedule.

(b) If he has completed twenty-one but less than twenty-five years' approved service a sum not less than 20-60ths nor more than 20-50ths of annual pay, with an addition of not less 2-60ths or more than 2-50ths of annual pay for every *completed* year of approved service above twenty years ; and

(c) If he has completed twenty-five years' approved service, a sum not less than 30-60ths for more than 31-50ths of annual pay, with an addition of not less than 1-60th nor more than 3-50ths of annual pay for every *completed* year of approved service above twenty-five years ; SO, HOWEVER, THAT THE PENSION SHALL NOT EXCEED TWO-THIRDS OF HIS ANNUAL PAY.

(2.) *Age limit.*—Where a limit of age is fixed below which a constable may not retire without medical certificate, it shall be not less than fifty nor more than fifty-five years for constables and sergeants, nor more than sixty years for officers of higher rank, but it shall not be obligatory to fix any such limit (*e*). See also H. O. Circular, *post*.

Part II.

Maximum of gratuity.—(3.) A gratuity (*f*) to a constable shall not exceed one month's pay for every completed year of service.

Special pensions.—(4.) The pension (*g*) to a constable incapacitated through injury on duty shall vary according to nature of injury (accidental or otherwise) and disablement (*h*).

(5.) The amount of pension shall be at discretion of police authority, but within maximum and minimum limits.

"Special" pensions are arranged under four headings or scales ; designated, A., B., C., and D.

The rates of pension varying from 1-5th of salary to full pay.

Scale A. deals with cases of accidental injury and partial disablement.

Scale B.—Cases of accidental injury and total disablement.

Scale C.—Cases of non-accidental injury and partial disablement.

Scale D.—Cases of non-accidental injury and total disablement.

The latter scale authorizes a "full pay" pension.

Widows and children.—(6.) Where a constable dies through injury on duty, the pension to widow (*i*) and allowances to children shall be as follows :

(a) Annual pension to widow, £15.

(b) Annual allowance to each child, £2 10*s*.

Provided that in the case of a constable of higher rank than a sergeant, the above amounts may be increased, so, however, that the pension for an inspector's widow is not to exceed £25, nor for the widow of an officer of higher rank, £30, and the allowance for a child of a constable of higher rank than a sergeant is not to exceed £5 per annum.

(*e*) The subsequent alteration of any age limit is tantamount to the introduction of a new scale. See s. 30, note (*a*) ; 55 J. P. 442.

(*f*) Section 1 (c) and Part. III. of Schedule.

(*g*) Section 3 of Act.

(*h*) See now s. 3 of Police Act, 1893.

(*i*) Section 2 of Act and Part III. of Schedule.

(7.) *Gratuities* granted to widow and children shall not exceed in the whole the amount of one month's pay for every completed year of approved service of constable.

(8.) As to gratuities to widow and children of a constable who dies within twelve months after grant of pension.

Part III.

General rules.—(9.) A widow's pension shall continue only while she remains a widow and is of good character.

(10.) The allowance to a child shall cease after fifteen years of age.

(11.) In estimating pension, gratuity, or allowance—

(a) The pension or gratuity to a constable shall be calculated according to annual pay at date of retirement.

(b) Pension to widow or allowance to child shall be calculated on constable's amount of pay at date of death.

(c) But where a constable has (*k*), in the course of the three years next before the date of his retirement or death, been *in more than one rank* (*l*), *his annual pay* at the date of the retirement or death *shall be deemed to be the average annual amount of pay* received by him for the said *three* years *instead of the annual amount actually received* by him at date of retirement or death.

SECOND SCHEDULE.—DECLARATION (s. 26).

Form of declaration as to former service (if any) in police force, Royal Irish Constabulary, Royal Navy, Army, Militia, Post Office, or public department.

THIRD SCHEDULE—POLICE AREAS AND AUTHORITIES.

In this Schedule the expression "county" means an administrative county, but does not include a county borough.

Such parts of any county as are within the Metropolitan Police District shall not be deemed to form part of the county police area.

Police Area.	Police Authority.	Chief Officer.	Police Fund.
Metropolitan District.	Secretary of State.	Commissioner of police.	Expenses of metropolitan police fund.
In a county -	Standing joint committee.	Chief constable.	County fund.
In a borough -	Watch committee.	Chief or head constable.	Borough fund or rate.

The Schedule also defines towns not being a borough maintaining separate police under a local Act, also the river Tyne police.

(*k*) Amended by Police Act, 1893, s. 6.

(*l*) With reference to the word "rank" see note (*n*), p. 486.

FOURTH SCHEDULE.—ACTS REPEALED.

Certain sections (enumerated in Schedule) of the following Acts are repealed :—10 Geo. 4, c. 44 ; 2 & 3 Vict. c. 47 ; 2 & 3 Vict. c. 71 ; 3 & 4 Vict. c. 88 ; 19 & 20 Vict. c. 69 ; 20 & 21 Vict. c. 64 ; 22 & 23 Vict. c. 32 ; 24 & 25 Vict. c. 124 ; 28 & 29 Vict. c. 35 ; 45 & 46 Vict. c. 50.

FIFTH SCHEDULE.—THE POLICE (ENGLAND) ACTS.

2 & 3 Vict. c. 93 (County Police Act, 1839) ; 3 & 4 Vict. c. 88 (Police Act, 1840) ; 19 & 20 Vict. c. 69 (County and Borough Police Act, 1856) ; 20 Vict. c. 2 (Police Act, 1857) ; 22 & 23 Vict. c. 32 (County and Borough Police Act, 1859) ; 28 & 29 Vict. c. 35 (Police Superannuation Act, 1885).

Sections one hundred and ninety to one hundred and ninety four (both inclusive) of the Municipal Corporations Act, 1882, shall for the purposes of this Act be deemed to form part of the Acts in this Schedule.

POLICE ACT, 1893.

(56 Vict. c. 10).

An Act to amend the Police Acts (*m*).

Fire duty.—Where a constable belonging to any police force is required to act as a fireman or assist in protecting life or property from fire, such constable shall be deemed for the purposes of the Police Act, 1890, to be in the execution of his duty (s. 1).

The council of a borough may delegate to the watch committee its powers under ss. 32, 33 of the Town Police Clauses Act, 1847 (or under local Acts), and in such case the watch committee may employ constables wholly or partially as firemen :

Provided that no constable (not so employed at the passing of Act) shall be so employed without his consent.

The pay and allowances of constables so employed shall be defrayed from fund or rate applicable to purposes of fire brigade or fire police.

Pensions and gratuities to such constables, and allowances and gratuities to widows and children shall be paid out of the police pension fund ; but the council shall pay from the fund or rate applicable to fire brigade or fire police such contribution to police pension fund as the Secretary of State may determine to be a fair contribution (s. 2).

Where a pension is in pursuance of the Police Act, 1890, granted to a constable on the scale applicable to partial disability, the police authority may, *within three years* from the grant of the pension, if satisfied by medical evidence of practitioner selected by proper authority, that the disability has become total, increase the pension to the amount allowed by the provisions of the scale applicable to total disability (s. 3).

[The section to apply to all pensions granted since the commencement of Act (1890).]

(*m*) See also Home Office Circular (August, 1893), *post*.

The provisions of s. 13 (2) Police Act, 1890, shall apply to any constable in receipt of a pension who is appointed to any office remunerated out of any parochial, district, or other rate (s. 4).

A police authority, in addition to the powers of investment conferred by s. 18, Police Act, 1890, may invest the capital of the pension fund in debentures or mortgages issued or made by a county council in pursuance of the powers conferred by s. 69 (8) of the Local Government Act, 1888 (s. 5).

In Sched. I. (11) (c) of the Police Act, 1890, for the words "where a constable has, in the course of the three years next before the date of his retirement or death, been in more than one rank" (*n*) shall be substituted the words "where a constable at the date of his retirement or death holds a rank to which he has been promoted within the three years previous" (s. 6).

Act to be read as one with the Police Act, 1890, and powers of Secretary of State, under s. 17 of that Act, not to be diminished (s. 7).

The words "any mischief by fire and" in s. 14 of the Town Police Clauses Act, 1847, are hereby repealed, and this Act shall have effect notwithstanding anything in any other Act, local or general, to the contrary.

Where any local Act or Order contains provisions as to a fire brigade or fire police, the Secretary of State may frame and submit to Parliament a Provisional Order repealing or modifying such provisions so as to bring them into harmony with the provisions of this Act, and he may by such Order unite any existing fire brigade pension fund with the police pension fund, and may make any other adjustments which may appear to him to be necessary in order to give effect to this Act (s. 8).

This Act may be cited as the Police Act, 1893; and the Police Acts, 1839 to 1890, and this Act may be cited as Police Acts, 1839 to 1893.

As to Financial Powers, Pensions, etc.

Grants made under the Local Taxation Act, 1890 (*o*), are regulated by s. 17 of the Police Act, 1890, and by s. 15, rateable deductions from pay are to be carried to pension fund, and fines, fees, etc., specified (s. 16).

The audit of the pension fund accounts is to be conducted under the same enactments and regulations as those relating to the police fund (s. 18 (2)). The surplus of the annual income of the pension fund above the expenditure is to be invested (*ibid.* (3)), and by s. 19, the pension fund is guaranteed out of the police fund. *The capital of the pension fund is not to be applied for paying any sums payable out of that fund* (s. 18 (4)).

Under the Local Government Act, 1888, ss. 28 (2), 81 (2) and 82 (1), the county council may delegate business to committees. They act as a

(*n*) As to "ranks" in police force, see 55 J. P. 331 (*constable retiring after promoted to rank of sergeant with four grades in rank*); 55 J. P. 668 (constable retiring after reduction, but now under s. 6 of Police Act, 1893, the question is otherwise affected); 55 J. P. 716 (classes of superintendents); 56 J. P. 107 (as to calculation of average pay); 55 J. P. 779 (as to raising of pay without alteration of rank).

(*o*) These grants are carried to the exchequer contribution accounts of county and county borough funds.

body corporate by virtue of s. 79 (1), and s. 80 provides for the mode of transacting certain financial business.

The standing joint committee of the county council and quarter sessions will act independently, and the exercise of the powers conferred upon them will not require approval either by the council or the quarter sessions (s. 82 (2), and s. 75 (16)).

NOTE.—The county council is to provide for payment out of the county fund of all such expenditure as the standing joint committee determined to be required for the purposes of the matters with which they are authorised to deal (s. 33). See also Home Office Circulars, *post*.

CIRCULARS ISSUED BY SECRETARY OF STATE.

On the formation of police forces under 2 & 3 Vict. c. 93, in 1839, instructions were issued by the Home Office for the information and guidance of constables then appointed; these instructions were reprinted October 25th, 1892, and re-issued together with a number of Circulars then in force.

The following is a list of the Circulars referred to, and also of certain Circulars since issued. Circulars of merely temporary interest are omitted:

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(*p*) See now Circular *re* Pistols Act.

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EXTRADITION (1).

A. 28959/12. 25th October, 1884.

Referring to a complaint made by a foreign government that an officer of a county court induced a fugitive, for whose extradition proceedings were pending, to return with him to England as a voluntary prisoner, submitting for this purpose to a certain degree of duress, and it is represented that such conduct was a serious offence against the law of the land, punishable on conviction with a long term of imprisonment.

Officers of police sent abroad to aid in tracing fugitive offenders are cautioned to abstain from all semblance of interference with the liberty of any fugitive in a foreign country; and, beyond furnishing information, to leave the case to be dealt with by the foreign authorities in the regular process of extradition.

PRISONERS IN CUSTODY (1).

A. 34434. 23rd March, 1885.

Referring to cases in which persons have been committed to prison while in a moribund condition or suffering from serious disease, and to certain cases in which prisoners have died in prison from diseases the

symptoms of which might, in the opinion of the Medical Inspector of Prisons, have been detected if they had been medically examined at the time of their committal.

It is desirable that every care should be taken to prevent persons afflicted with fatal disorders from being sent to prisons. When any prisoner in custody complains of illness, or shows symptoms of illness or of being in a feeble state of health, whether he makes complaint or not, the police surgeon or other medical man should be summoned and the prisoner medically examined.

DISUSED MINE SHAFTS.

A. 38203/20. 14th May, 1885.

Police to notify any instances of unfenced or insecurely fenced old mine shafts which come under their observation; such notification to be sent to the Home Office for the information of H.M. Inspector of Mines for the district.

BOILER EXPLOSIONS.

A. 39,671. 20th June, 1885.

Calling attention to the requirements of s. 5 of the Boiler Explosions Act, 1882, as to notice of a boiler explosion being sent to the Board of Trade by the owner or user of the boiler within twenty-four hours of the occurrence of any boiler explosion.

EXTRADITION (2).

A. 23384/54*a*. 2nd February, 1886.

Calling attention to the great importance of care and accuracy in preparing the information and warrant on which it is proposed to found an application to the government of a foreign country, or of a colony, for the surrender of a fugitive from justice.

GUN LICENCE ACT, 1870.

A. 1842/57. 8th August, 1887.

Desiring that police officers should be instructed to report regularly to their superior officers all cases of unlicensed pistol-carrying which come under their notice in the execution of their duties as police; and that such reports are regularly communicated to the Inland Revenue Authorities (*q*).

AS TO BIRCHING OF YOUTHFUL OFFENDERS.

X. 15463/8. 29th August, 1887.

PRISONERS' PREVIOUS CONVICTIONS.

A. 47975/14. 3rd February, 1888.

Drawing attention to the desirability of police in all cases in which prisoners are committed for trial, communicating at once to governors of prisons what they know of the previous convictions of such prisoners.

It is very desirable that this information should be given at the time the prisoner is committed.

(*q*) See now Circular *re* "Pistols," December, 1903.

LOCAL GOVERNMENT ACT, 1888.

A. 49318. 17th January, 1889.

Stating that as in consequence of the provisions of the Local Government Act, 1888, no direct government contribution will hereafter be made in aid of local police expenditure, it will no longer be necessary for the local police authorities to submit, for approval, proposals involving increase of cost, with a view to providing for the increased charge in the estimates.

The instructions in the Circulars of March 24th, 1876, October 16th, 1877, and February 18th, 1878, are, therefore, no longer in force.

I am, however, to call attention to the fact that the Secretary of State's sanction, however, is still required—

(1) For any alteration of the number of constables in a county police force (2 & 3 Vict. c. 93, s. 2).

(2) For any alteration in the number of superintendents, and in the other ranks of officers (3 & 4 Vict. c. 88, s. 26).

(3) For any alteration in the number of constables in any district of a county divided into police districts under 3 & 4 Vict. c. 88, s. 27.

The rates of pay of county constabulary will continue subject to the Rules of April 12th, 1886, made under 2 & 3 Vict. c. 93, s. 3; and the Secretary of State's sanction will be required for any rates of pay exceeding the scales mentioned in these Rules.

MILITARY DESERTERS (1).

A. 50875/2. 4th December, 1889.

Subsistence in police cells.—Superseded by Circular to clerks to justices of June 15th, 1898.

POLICE ACT, 1890.—(1) ADOPTION OF PENSION SCALE, ETC.

A. 51952. 7th October, 1890.

Circular issued when the Police Act, 1890, came into operation, *re* provisions of Act, drawing attention to scale for "ordinary" and "special" pensions—limit of age, previous service, fire police, etc.

EXTRADITION (3).

X. 32054. 9th June, 1891.

(Already embodied in article on "Extradition." See title "GENERAL SUBJECTS," *ante*.) Calling attention to Circulars of June 20th, 1881, and November 6th, 1883, and stating that notwithstanding these repeated instructions, cases had occurred in which chief officers of police had made direct application to the police or judicial authorities of other countries for the arrest of fugitive criminals. The Secretary of State is compelled once more to call attention to the matter, and to state "that the rule against direct applications to foreign police for the arrest of fugitives is one which in ordinary circumstances can admit of no exceptions; and that any officer of police who hereafter disregards it will incur the severest censure."

MILITARY DESERTERS (2).

A. 53315/6. 7th December, 1891.

Stating that the doubts which formerly existed as to whether police constables were entitled to receive for their own use the rewards given by the War Office for the apprehension of deserters have been removed. By s. 34 of Police Act, 1890, the word "fee" is so defined as to exclude "rewards paid to an individual constable by direction of any military authority," these rewards do not therefore come within the provisions of the Act, under which fees received by constables for acts done in the execution of their duty are payable to the police fund or pension fund (ss. 23 and 16).

These rewards should be given to the police individually as a recognition of their services. As regards *amount* of the reward, see title "Deserters," note (1), GENERAL SUBJECTS, *ante*.

POLICE ACT, 1890 (2).

A. 52256. 10th December, 1891.

As to framing of quinquennial table of fees by police authority, see s. 23 of Police Act, 1890.

POLICE LENT TO PRIVATE EMPLOYERS.

January, 1892.

(*Memorandum as to receipts in respect of the services of Constables lent to Private Employers.*)

The percentage on pay to be charged for superannuation, rateable deductions, etc. [Issued from time to time as occasion arises.]

PRISONERS IN CUSTODY (2).

Police Circular dated 27th June, 1892—"Communications."

PRISONERS IN CUSTODY (3).

Police Circular dated 4th July, 1892. Similar purport to Circular of June 27th, 1892.

AS TO "CASTINGS," ETC.

Police Circular dated October, 1892.

POLICE ACT, 1893.

A. 55050. 5th August, 1893.

Explanatory circular *re* provisions of Act.

S. 1.—Differentiating between a police constable who *acts as a fireman* and a constable who *assists* at a fire.

S. 2.—As to police fire brigades in boroughs.

S. 3 corrects an omission in the Police Act, 1890, s. 5 (6), *re* temporary pensions to officers injured on duty. S. 3 of Act of 1893 enables a police authority to increase the pension, if, within three years from the grant of the pension, partial disablement becomes total disablement.

S. 4.—This section supplies an omission in s. 13 (2) of the Act of 1890.

S. 5 extends the powers of investment of the capital of the pension fund conferred by s. 18 of the Act of 1890 (*r*).

S. 6 corrects a mistake in the rule for the calculation of pensions and gratuities which was prescribed in Sched. I. of the Police Act, 1890.

When the rule was framed it was intended that where an officer had been *promoted* within three years of his retirement, his pension should be calculated on his average pay for the last three years of his service; but the paragraph was so worded as to include the case of an officer *degraded*.

PLANS FOR POLICE STATIONS.

A. 54032. October, 1893.

Plans for police stations which require the sanction of the Secretary of State (under s. 12 of Police Act. 1840) are to be sent, not directly to the Secretary of State, but to the "Surveyor General of Prisons, Home Office, Whitehall."

The letter forwarding the plans should in every case state whether or not it is proposed that the cost or any part of it should be defrayed by means of a loan.

AID LENT BY ONE POLICE FORCE TO ANOTHER.

A. 52632 B./18. 12th July, 1894.

Enclosing Model Forms (A. & B.) of agreement for police aid under s. 25 of Police Act, 1890, with Schedule of charges for officers and men employed.

INFORMATIONS, ROUTE FORMS, ETC.

A. 56234/21. 6th February, 1895.

Drawing attention to the amount of clerical labour occasioned at the headquarters of large county or borough police forces by the receipt from other forces of notices or "informations" which, if they are to be of any use, require to be circulated to different divisional stations.

The work of copying such notices is one that should fall, where practicable, on the force that issues them, rather than on the force to whom they are issued.

The Secretary of State suggests that whenever a notice is sent out, not one copy only should be sent, but a number of copies sufficient for the object in view (*s*).

It is presumed that every force will have in their possession sufficient information respecting the divisions in the districts watched by other forces, to determine how many copies will be required for distribution.

(*r*) Before the exchequer contribution to the pension fund can be paid, the Secretary of State must give a certificate that the "administration of the pension fund" during the past year has been "satisfactory" (Police Act. 1890, s. 17 (2)). The Secretary of State before giving this certificate requires to be satisfied amongst other things of the proper investment of the capital of the fund.

(*s*) Time may often be saved by sending notices direct to superintendents of divisions. When this is done the chief constable should be informed of the division to which they have been so sent.

The above remarks are intended to apply to "route forms" or inquiries as to the antecedents of persons already in custody, to requests for the arrest of persons against whom warrants have been issued, and to other similar notices.

The circulation of notices which are not likely to lead to any good result, should be avoided, such as "route forms" without photographs or any such definite particulars as could give means of identifying the prisoner in question.

An intimation of the arrest of an offender should be sent to such police forces as have been previously requested to arrest him.

With regard to the metropolitan police force, *three copies* of all informations, circulars, notices, or descriptive bills, intended for circulation in the district, and two copies of all route forms, either with or without photographs, should be forwarded to New Scotland Yard.

PRISONERS IN CUSTODY (4).

Police Circular, dated 18th February, 1895—"Medical examinations."

PRISONERS IN CUSTODY (5).

Police Circular, dated 7th February, 1896—"Interviews."

RE-ARREST OF PRISONERS ON DISCHARGE (1).

A. 57747. 20th August, 1896.

Drawing attention to the undesirability of re-arresting a prisoner at the prison gates.

The difficulty is one which cannot be finally or completely removed without legislation, but it might be materially lightened by administrative action.

Whenever a prisoner is to be tried for an offence committed either prior to, or in connection with another offence of a similar nature for which he has already suffered punishment, the fact should always be brought to the notice of the court by whom, in the event of conviction, judgment will be passed.

In proceeding against a man who is already undergoing imprisonment there are in some cases advantages in proceeding by means of a writ of *habeas corpus ad respondendum* (*t*), obtained by application on affidavit to a judge in chambers, and so procuring the production of the accused before the court by whom the fresh charges are cognizable during the currency of his sentence, instead of waiting till the expiration of the prisoner's sentence and re-arresting him on discharge.

(*t*) It is now sufficient in ordinary cases to apply to the Secretary of State for an order for the prisoner's production. See later Circular of 16th October, 1899, as to procedure.

ALLOWANCES TO POLICE OFFICERS TRAVELLING TO PROVE PREVIOUS CONVICTIONS (1).

A. 50980/32. 25th September, 1896.
Superseded.

RE-ARREST OF PRISONERS ON DISCHARGE (2).

X. 59997. 1st January, 1897.

Re difficulties which from time to time have arisen in cases where a prisoner is in custody and two or more warrants are held by different police forces for his re-arrest on discharge.

In these cases the question arises as to which warrant is to take precedence, and in the absence of any recognised principle in the matter, there is clearly a danger of a dispute arising between the forces, which in an extreme case might lead to unseemly proceedings at the prison gates. It is desirable that some uniformity of practice should be established. The Secretary of State is of opinion that the most convenient practice is that, apart from special circumstances, the warrant that has been issued first, should be executed first.

ALLOWANCES TO POLICE OFFICERS TRAVELLING TO PROVE PREVIOUS CONVICTIONS (2).

A. 50980 B./2. 8th March, 1897.
Superseded.

TREATMENT OF FIRST OFFENDERS IN PRISON.

A. 57530/8. 9th April, 1897.

Requesting co-operation of police in efforts to create a "star class" for first offenders sentenced to three months imprisonment or upwards. Copy of Form (*re* information registered) accompanied circulars.

REGULATIONS MADE BY THE SECRETARY OF STATE UNDER SECTION 2 OF THE POLICE (PROPERTY) ACT, 1897.

14th February, 1898.

1. All property which has come into the possession of the police under the circumstances mentioned in s. 1 of the Police (Property) Act, 1897, where the owner has not been ascertained, and no order of a competent court has been made with respect thereto, shall be dealt with as follows:

(a) When such property is a perishable article, or its custody involves unreasonable expense or inconvenience, the same shall be sold as soon as conveniently may be after the same has come into the possession of the police.

(b) When such property consists of money, the same shall be dealt with in all respects as is hereinafter provided with regard to the proceeds of sale hereby authorised, after the same has remained in the possession of the police for one year.

(c) In the case of any property, the same shall be sold as soon as may be after the same has remained in the possession of the police for one year.

2. The proceeds of all sales hereby authorised shall forthwith be paid to the treasurer of the police fund, or to the chief officer of police, as may be directed by the police authority, and shall by him be kept in a separate account, to be called the Prisoners' Property Fund.

The Circular deals with the investment of fund, payments out of same, etc.

MILITARY PRISONERS.

A. 59626. 4th April, 1898.

Referring to receipt from the War Office of a communication with regard to soldiers in uniform when in custody of the civil power, being marched through the streets, requesting that in such cases cabs or other covered carriages may be employed. The cost of providing such conveyances to be recoverable from army funds.

REFORMATORIES FOR INEBRIATES.

B. 27526. December, 1898.

Calling attention to the Act 61 & 62 Vict. c. 60, relating to the committal to reformatories of habitual drunkards convicted of crime and of habitual drunkards who four times within twelve months are convicted of certain offences of drunkenness.

Regulations have been made under ss. 5, 6, and 20 of the Act.

NAVAL PRISONERS.

A. 58839/6. 10th January, 1899.

Referring to a Circular received from the Admiralty requesting that naval prisoners might not be marched handcuffed through the streets, a further communication has been received from the Admiralty requesting that under no circumstances may prisoners belonging to the Royal Navy or Royal Marines, when in custody of the civil power, be marched through the streets, whether handcuffed or not; in such cases cabs or other covered carriages may be employed. The cost of providing such conveyances will be recoverable from navy funds, and claims for repayment should be addressed to the commanding officers of the ships to which the prisoners belong.

PRISONERS' PRODUCTION IN COURT.

A. 58565/15. 16th October, 1899.

Referring to Circular of 20th August, 1896, and 1st May, 1897 (*u*), relating to the method to be pursued in order to bring up a prisoner for trial during the currency of a sentence of imprisonment or penal servitude, instead of re-arresting him at the prison gates, the passing of the Prison Act, 1898, has made it possible to simplify the procedure required.

Under s. 11 of that Act the Secretary of State has power to make an order for the production of any prisoner at such time or place as may be required in the interests of justice or for the purpose of any public inquiry. It will no longer, therefore, be necessary to apply to the Director of Public

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(*u*) The Circular of 1st May, 1897, is now superseded.

Prosecutions to obtain a writ of *habeas corpus ad respondendum*, but in ordinary cases it will be sufficient to apply to the Secretary of State for an order for the prisoner's production, sending with the application a statutory declaration briefly setting forth the grounds on which the order is desired.

The declaration should bear a 2*s*. 6*d*. stamp.

PASSENGER STEAMERS.

A. 47511/41. 14th June, 1900.

Referring to a letter from the Board of Trade on the subject of the overcrowding of passenger steamers.

The Board point out that the number of convictions obtained last year shows that the practice of overcrowding these vessels is difficult to check (attention is called to Circular of 24th October, 1893); the utmost vigilance should be exercised by the police in dealing with the matter.

ARMY RESERVISTS.

A. 61908/28. 1st March, 1901.

With regard to the exemption from military service which is granted to army reservists in police forces who have reached the rank of sergeant of police, paragraph 26 (h) of the Regulations for the 1st Class Army Reserve has been amended by the Secretary of State for War, and now runs as follows:

> "Men of the 1st Class Army Reserve who are serving in the Metropolitan, City, County, or Borough Police, and Royal Irish Constabulary, will, on promotion to the rank of sergeant of police, be discharged from the reserve without reference to higher authority.
>
> "The discharge will be granted on the application of the reservist himself, or of the commissioner or chief constable on his behalf. *Unless this discharge is applied for at the time of promotion, sergeants of police will not be exempted from their liability as reservists.*"

In future, when any member of the police force, who belongs to the Army Reserve, is promoted to the rank of sergeant, the promotion should be reported, in order to secure his discharge from the reserve, to the district paymaster or other officer who keeps the reservist's documents, as laid down in paragraph 28 of the same Regulations.

MILITARY DESERTERS (3).

X. 82957/3. 10th August, 1901.

Referring to a communication from the War Office pointing out that the number of apprehensions during the last ten years of deserters and absentees from certain militia units as compared with the number of men liable to apprehension, discloses great disparities, and points to the conclusion that less pains are taken in some localities than in others to secure the apprehension of such offenders.

The police are asked to afford the military authorities such assistance as they can for the purpose of securing the object desired.

IDENTIFICATION OF CRIMINALS BY FINGER PRINTS (*x*).

A. 63109. 3rd February, 1902.

DELIVERY OF MILITARY DESERTERS INTO MILITARY CUSTODY, WITHOUT PREVIOUS COMMITTAL TO PRISON.

X. 81929. 16th October, 1902.

With reference to a scheme for facilitating the delivery of military deserters into military custody without previous committal to prison (already in operation in the metropolis).

In the metropolis, when a man is apprehended by the police or surrenders himself to them, and is charged with being a deserter or absentee from a military unit quartered at some place from which an escort could reach the court while it is sitting, a telegram is sent by the police to the officer commanding the man's regiment, giving the particulars of the case and inquiring whether an escort will be sent to the court to receive the offender. The police acquaint the court with the facts and with the contents of the telegram received in reply. If an escort arrives before the court rises and the deserter is duly identified, he is then handed over without further delay. The non-commissioned officer of the escort is instructed to obtain the Descriptive Return on Army Form O. 1618, before leaving the court.

It is desirable that this system should be generally adopted wherever practicable; that is, wherever the means of communication by railway or otherwise between the military centre and the court-house allow of its adoption. Police are requested in such cases to telegraph at once, when a deserter comes into their hands, to the officer commanding his regiment.

SUMMARY OF LICENSING ACT, 1902.

B. 38620. 6th November, 1902.

See "Licensing Act, 1902," p. 333.

Section 6 refers to the method known as "blacklisting"; the following is a copy of Form to be used *re* notice:—

Licensing Act, 1902 (2 *Edw.* 7, *c.* 28).

Sale of Liquor to Habitual Drunkards.

Particulars of Notice of Conviction to be sent to the Police Authority prescribed by the Secretary of State under s. 6 of the Licensing Act, 1902.

Date of Conviction.	Date of Order directing notice to Police Authority.	Name of person convicted.	Age.	Address of person convicted.	Place of business or where employed	Offence of which convicted.	Sentence.	Licensed premises or Clubs usually frequented (if known).

Clerk to Justices for —— Petty Sessional Division.

(*x*) Further circulars on the same subject were issued August and November, 1903, and September and December, 1904: Correspondence with Registrar—Finger prints on glass, etc.

PARTICULARS OF PREVIOUS CONVICTIONS TO GOVERNORS OF PRISONS.

A. 60417/24. 8th May, 1903.

FORWARDING COPY OF PISTOLS ACT.

111042. 3rd December, 1903.

See title "Pistols Act" (GENERAL SUBJECTS), *ante*.

A form of register accompanied circular.

TESTIMONIALS TO POLICE.

105090/4. 15th May, 1903.

Undesirability in certain cases.

ALLOWANCES TO WITNESSES AND PROSECUTORS IN CRIMINAL PROSECUTIONS.

18th December, 1903.

See title p. 118.

EXTRADITION AND FUGITIVE OFFENDERS.

A. 51139. December, 1903.

See title "Extradition" (GENERAL SUBJECTS), *ante*.

REVISED REGULATIONS OF THE ROYAL FLEET RESERVE.

B. 15.912/32. 23rd December, 1903.

REGULATIONS AS TO ALLOWANCES TO PROSECUTORS AND WITNESSES.

A. 63427.

IDENTIFICATION—USE OF PHOTOGRAPHS.

Circular dated 30th March, 1905.

As to points to be avoided when using photographs for purpose of identification of suspected person.

POLICE RETURNS OF CRIME.

(See 57 J. P., p. 99, February 18th, 1893.)

These returns were first made in accordance with requirements of Police Act, 1856 (19 & 20 Vict. c. 69), and remained for many years unaltered. A new set of forms was issued (1892), and the period for which the returns are made is now altered from September 29th to end of calendar year (*y*).

These returns are voluminous, and the instructions for their preparation, comprehensive and elaborate. A circular letter and special instructions were issued by the Home Office, December 30th, 1892, for the guidance of police preparing the returns. Further instructions were issued with a circular on May 16th, 1893.

The chief object of the returns is to ensure uniformity of system. Hitherto various methods have obtained in the several police forces, and

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(*y*) See Police Returns Act, 1892, p. 151.

offences have not unfrequently been duplicated. For the future, a definite principle is laid down, *one offence only is to be tabulated*, and rules are given for the selection for the purpose of the *graver offence*. Uniformity is thus secured. A separate return (E.) provides for cases of a *quasi criminal* character.

No instructions are given as to mode of collecting the returns from the various police districts of a county, and in this respect much diversity of practice prevails, but it is imperative that an accurate and careful day-to-day or periodical record be kept if accuracy is to be secured.

MEMORANDA ON AMBULANCE WORK.

(TAKEN FROM THE
CONSTABLE'S POCKET BOOK BY T. HASTINGS LEES, M.A.)

FIRST AID TO THE INJURED.

Ambulance work under the above title has been for some time in vogue amongst police forces, and many officers wear badges for which they have to qualify by examination after attendance at ambulance classes.

The following notes on the subject are here inserted in the hope that they may be useful as a memoranda to the qualified, and to others give an outline of the system advocated in the various handbooks (*a*) issued on the subject :

ACCIDENTS.

In all cases of accidents or sudden illness in the streets the police should afford all necessary assistance, prevent unnecessary crowding, reassure the sufferer, give aid, undo tight clothing, secure from annoyance by pressure or idle questions, and if injury be serious send for medical aid ; in cases of fracture secure part in splints before moving, but do not attempt to set the bones. *Extemporary* splints may always be formed of sticks, wood, or an umbrella.

HÆMORRHAGE.

Hæmorrhage or bleeding may be—

1. *Arterial.*—Where blood is *bright* red, "spurting" from wound, in which case at once apply pressure by thumb or finger.
2. *Venous.*—Where blood is *dark* red, "welling" up from wound, apply pad of lint dipped in cold water and bandage ; keep limb well raised.
3. *Capillary.*—Usually caused by *scratch* or graze ; bathe in cold water and apply wet rag.

If blood be vomited, give ice to suck, keeping patient quiet.
In nose bleeding, raise head and apply ice or cold water to forehead.

WOUNDS.

Cleanse wounds by careful washing before dressing ; draw parts together, and keep in place with strips of plaister. If organ protrude, cover lightly with flannels wrung out in warm water (temperature 98° Fahrenheit), whilst awaiting arrival of surgeon.

(*a*) "Handbook on First Aid to Injured," by Robert Bruce, St. John's Ambulance Association, Clerkenwell, London, E.C. (1*s.* 1*d.*)

FRACTURES.

1. "Simple," where bone only is broken.
2. "Compound," where broken bone protrudes.
3. "Comminuted," where bone is broken into several pieces.
4. "Complicated," where bone is broken and surrounding parts injured, as ribs in lungs or artery divided.

In examining, handle very gently; leave clothes on for sake of warmth and for padding. If movement necessary, attach something firm to prevent bone moving. Umbrellas, sticks, or timber, form good *extemporary* splints if padded well with soft material.

If bleeding shows endeavour to stop it.

Fracture of base of skull.—Signs: Unconsciousness, with bleeding from mouth, nose, or ears; sticky bloody fluid from ears. Raise head and keep quiet till doctor arrives.

Fracture of jaw.—Jaw drops; place in position and bandage.

Collar bone.—Sign: Inability to raise arm up. Treatment: Place rolled handkerchief in armpit; raise arm and place in sling.

Arm bone.—Put in splints with bandage each side of fracture; secure upper bandage first.

Fore arm.—Bend limb, keeping thumb up: apply two splints, one inside, one out; apply bandage. There being two bones (ulna and radius), fracture of *one* only is not always perceptible.

Ribs.—Signs: Sharp, cutting pain on taking breath or coughing; ends of bones may be felt. Treatment: Tie two broad triangular bandages firmly round chest.

Thigh.—Place long splint (broom handles, etc.) from armpit to foot; tie firmly to body by bandage passing round chest, above and below fracture and below knee; tie legs firmly together. In case of woman, tie both legs.

DISLOCATION.

Is distinguishable from fracture by injury occurring *at joint*: limb becomes immovable; there is no "crepitus" or grating sensation; send at once for medical aid.

SPRAINS.

If there be great pain, a hot bath and fomentation, with complete rest; ordinary cold water and compress; elevate the limb.

BANDAGING.

Esmarch's triangular bandage.—The use of this bandage is fully treated of in handbook referred to (p. 499 (*a*)).

A
ice, DRRYING.

Various methods of c arns. Fu njured person are given in handbook referred to, p. 499 (*a*). 3.

Note.—The plan of carr e return person—drunken or violent—face downwards by arms and legs ma ave ol e death, and should never be resorted to.

ce F

INSENSIBILITY.

Syncope and fainting.—If a person has fainted, give air; loosen clothing; place prostrate, with head on level of body; bath with cold water; give stimulant; in case of exhaustion from hunger give warm milk in sips, then beef tea or wine.

Hysterical fits.—Threaten to drench with water, keep quiet, and exclude friends.

Apoplexy (effusion of blood on brain).—Signs: Insensibility; stertorous breathing. Treatment: Place prostrate, head slightly raised; loosen clothing; keep head cool and feet warm; give no stimulant or anything by the mouth.

Epilepsy.—The person seized with fit, screams, faints, and falls, hands clenched, limbs jerk, mouth foams. Treatment: Do not restrain movements, but prevent injury, especially to tongue; allow sleep after fit.

Concussion of brain.—In slight cases patient is pale, breathing slow, eyes shut; will probably vomit and recover. Keep feet and hands warm; if a child, let it sleep; in severe cases, treat as for apoplexy.

Sunstroke.—Signs: Throbbing, with sick feeling. Apply ice or cold water to head; avoid stimulants.

FOREIGN BODIES IN EAR.

Put a few drops of warm oil in ear and send for doctor; do not poke the ear with pins, etc.

BITES OF ANIMALS.

If animal healthy, carefully wash well and dress with cold water; if rabid, apply tight ligature heart side of wound, wash thoroughly, then suck well (taking care no crack in lips); wound should then be *cauterised* with caustic or nitric acid, red-hot iron, gunpowder fired, or ordinary fusee; give brandy.

Adder or snake bite.—Apply strong ammonia; tie ligature between wound and heart, give brandy. The same course may be followed in case of sting of scorpion or hornet.

BURNS AND SCALDS.

Exclude air by dredging with flour if skin is unbroken; if otherwise, soak rag in sweet oil and cover wound; [*never hold a burn to the fire*]; remove clothing adhering, pouring oil over if necessary or cutting round with scissors. In case of person catching fire, throw on ground, wrap in rug, blanket, or coat.

FROST BITE.

Limbs become stiff: often hard and cold. Avoid sudden change of temperature. Place in cold room, then in warmer one; rub body with snow or cold cloths, then with warm cloths. When consciousness restored, give light stimulant.

FIRE.

The person in flames should be made to lie down at once, as flame ascends; throw a rug or coat over the body.

To pass through smoke in a house on fire dip a handkerchief in water, and tie it round the head, covering the mouth and nostrils; this will enable the wearer to pass through the densest smoke, and breathe freely.

In case of explosion of lamp, water should not be thrown on the burning oil. Sand or flour will extinguish the flame.

STRANGULATION.

At once cut any compressing band round throat; if necessary, commence artificial respiration, pulling out tongue to secure it.

Choking.—Boldly, but firmly, carry thumb and forefinger to back of mouth to hook obstruction forward; or lay patient on back, kneel on stomach, and strike on cheek; this will result in vomiting.

Hanging. — Cut rope at once; commence artifical respiration, if necessary.

SUSPENDED ANIMATION.

As to treatment to restore natural breathing in cases of persons apparently drowned, or in cases of hanging, see under title, "Wrecks," p. 442, *ante*.

ARTIFICIAL RESPIRATION.

This should be employed in cases of accident or poisoning, when breathing has become very feeble or has ceased, as in cases of hanging, drowning, suffocation, etc. [Persevere in efforts to restore life until arrival of medical assistance, or until pulse and breathing have ceased for two hours or more.]

See directions, title, "Wrecks," p. 442, *ante*.

POISONS AND ANTIDOTES.

Poisons (*b*) are substances capable of destroying life. Life may often be saved by administering an emetic, or an antidote to the poison taken.

Emetics are remedies used for the purpose of causing vomiting.

The safest and readiest are—

Irritating back of throat with the finger or a feather.

A tablespoonful or less of *made* mustard in a tumblerful of tepid water.

Salt half-ounce to one ounce in water, or two tablespoonsful of ipecacuanha wine in water.

Emetics are good antidotes in poisoning by salts of copper, arsenic, or other mineral or vegetable poisons.

To allay retching after severe emetic give plain warm water or milk and water.

The following is a list of poisons and antidotes:

Alcohol (drunkenness). — Remedy: Give a tablespoonful of made mustard in a tumblerful of warm water: then dash cold water in face and give sal volatile, strong coffee. Afterwards promote warmth.

Arsenic.—Remedy: Emetic of mustard at once, unless vomiting is already present. Sickness must be promoted by administering white of

(*b*) Alkalies and acids are in many cases strong poisons.

egg, barley water, milk, gruel, or give equal parts of oil and lime water. Two to four tablespoonsful of castor oil may be given to carry off poison from intestines.

Battle's vermin destroyer.—See "Phosphorus."

Cantharides or Spanish fly (hair washes).—Remedy: Excite vomiting. Give gruel, linseed tea freely, and warm bath. Avoid oil.

Carbolic acid. Mouth shrivelled and smells of tar. Remedy: Wash with oil, give Epsom salts in water as antidote, followed by white of egg in milk and water.

Caustic or silver nitrate.—Remedy: Common salt.

Charcoal fumes or gas (poisoning by escape of).—Remedy: Remove at once to pure air. Dash cold water on head and neck. Rub chest with stimulating applications. Artificial respiration.

Copper, salts of (mercurial plate powder, blue vitriol, verdigris, creosote).—Remedy: Give raw eggs freely.

Copperas (green vitriol).—Remedy: Magnesia in milk freely.

Gas.—See "Charcoal."

Goulard's extract (sugar of lead, white lead).—Remedy: Epsom salts and vinegar mixed.

Hair wash.—See "Cantharides."

Hartshorn and oil (washing soda, carbonate of soda).—Remedy: Vinegar and water, followed by orange or lemon juice in water.

Hemlock (tobacco, deadly nightshade).—Remedy: Emetics; then castor oil, then brandy.

Hydrochloric acid or spirits of salt (nitric acid, sulphuric acid, or oil of vitriol).—Remedy: Chalk, whiting, soap and water, or the plaster of the apartment beaten up with water. Olive oil, linseed tea, barley water, milk, gruel, may be given freely, either alone or with the above.

Laudanum.—See "Morphia."

Lead, sugar of, and white lead (Goulard's extract).—Remedy: Epsom salts and vinegar mixed.

Mushrooms, poisonous.—Remedy: Prompt emetic; then dose of castor oil; then brandy.

Morphia (opium, laudanum).—Remedy: Give a mustard emetic. Keep patient awake by walking him quickly about. Beat legs with wet towels, etc. Give strong coffee.

Nitre.—Remedy: Give an emetic at once.

Nitric acid.—Remedy: see "Hydrochloric acid."

Opium.—See "Morphia."

Oxalic acid.—Acid taste and burning sensation, vomiting blood. Remedy: Chalk, whiting, or magnesia in water. If necessary, vomiting should be excited.

Prussic acid.—Remedy: No antidote can be relied on. Dash cold water at once over head and neck; repeat at intervals. After recovery, excite vomiting, and then give strong coffee and brandy.

Phosphorus (Battle's vermin powder, rat poison, matches).—Remedy: Treatment *at once.* Oil of turpentine, dose up to one ounce.

Rat poison.—See "Phosphorus."

Saltpetre.—Remedy: Give an emetic at once.

Strychnine.—Remedy: Emetics at once, and repeat till free vomiting. If spasms have not begun, give oil (olive, melted lard, etc.) freely. Keep surroundings as quiet as possible, as even a breath of cold air may bring on a spasm.

Sugar of lead, white lead.—See "Lead."

Note.—Albumen and oils will protect the gullet and walls of the stomach in poisoning by irritants. White of egg, milk, flour and water, salad oil, and castor oil may be used.

ALCOHOLIC POISONING (*Drunkenness*).

Police should carefully note symptoms in special cases lest a fit or illness be mistaken for drunkenness. If in aggravated cases state is plainly due to intoxicant, give emetic (salt or mustard) and repeat, if ineffectual; after vomiting, patient should sleep. Keep warm, hot tea is a good stimulant; a drunken person can be roused by rubbing his ears, but this treatment may cause him to strike out.

Note.—A drunken person should not be placed in a cold cell; excessive drunkenness is a serious source of danger.

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